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* Omitted pursuant to stipulation.

LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN, PETITIONER,

vs.

EVALD JOHANN LARSEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JULY 25, 1952
CERTIORARI GRANTED OCTOBER 13, 1952

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* Omitted pursuant to stipulation.

United States Court of Appeals

FOR THE SECOND CIRCUIT

EVALD JOHANN LARSEN,
Plaintiff-Appellee,

against

J. LAURITZEN,
Defendant-Appellant.

Statement Under Rule No. 15

The above entitled action was commenced by the service of summons and complaint upon the defendant on May 7, 1947.

Issue was joined by the service of the defendant's answer on July 1, 1947.

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, the plaintiff, by his attorney, consented on May 7, 1951, to the service of an amended answer by the defendant. The defendant's amended answer was served on May 17, 1951.

Pursuant to a stipulation dated November 16, 1951, paragraph Sixth of the complaint was amended.

The action was tried before the Honorable Edward J. Dimock and a jury on December 5, 6 and 7, 1951, and resulted in a verdict for the plaintiff in the sum of $4,267.50.

Plaintiff taxed costs December 21, 1951, in the amount of $44.50.

Judgment in the amount of $4,267.00 with costs was entered in favor of plaintiff on December 21, 1951.

Statement Under Rule No. 15.

Pursuant to an order of the United States District Court for the Southern District of New York dated December 19, 1951, the title of this action was amended to correct the names of the parties.

Defendant filed notice of appeal from the judgment in favor of plaintiff on January 4, 1952.

Pursuant to an order of the United States District Court for the Southern District of New York dated February 6, 1952, the defendant's time to file the record on appeal was extended to April 3, 1952.

Plaintiff appeared by Richard M. Canton, Esq.

Defendant appeared by Haight, Griffin, Deming & Gardner, Esqs.

In January, 1949, the firm name of Haight, Griffin, Deming & Gardner was changed to Haight, Deming, Gardner, Poor & Havens.

Summons.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

Civil Action File No. 41-475.

IVALE JOHANN LARSEN,
Plaintiff,

v.

"JOHANNES" LAURITZEN, first name being fictitious, real name being unknown,
Defendant.

Plaintiff demands a trial by jury

To the above named Defendant:

YOU ARE HEREBY SUMMONED and required to serve upon Richard M. Cantor, plaintiff's attorney, whose address is 51 Chambers Street, New York 7, New York, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: May 6th, 1947.

WILLIAM V. CONNELL,
Clerk of Court.
[Seal of Court]

10

Complaint.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

ACTION UNDER SPECIAL RULE FOR SEAMEN TO SUE WITHOUT SECURITY AND PREPAYMENT OF FEES FOR ENFORCEMENT OF LAWS OF THE UNITED STATES FOR THE PROTECTION OF HEALTH AND SAFETY AT SEA.

Plaintiff, complaining of the Defendant herein, by his
11 attorney, Richard M. Cantor, respectfully shows to this Court, and alleges:

FIRST CAUSE OF ACTION

FIRST: Upon information and belief that at the time of the hereinafter mentioned occurrence, Defendant has a principal office for the transaction of business at 80 Broad Street, in the Borough of Manhattan, City and State of New York, within the jurisdiction of this Court.

SECOND: Upon information and belief that at all the times hereinafter mentioned, Defendant was the owner of the S.S. Randa.

THIRD: Upon information and belief that at all the times hereinafter mentioned, Defendant operated, man-
12 aged and/or controlled the S.S. Randa.

FOURTH: Upon information and belief, the Defendant herein employed the Plaintiff and paid his wages.

FIFTH: That prior hereto and on or about the 7th day of October, 1946, plaintiff was employed on board the S.S. Randa, and did become a member of the crew of said steamship and entered into the performance of his duties as a member of the crew of the aforesaid vessel and more particularly, as an Able Bodied Seaman.

SIXTH: That on or about the 7th day of October, 1946, and while said vessel was on navigable waters and while Plaintiff was engaged in the course of the duties assigned to him and in furtherance of Defendant's interests, he was caused to sustain personal injuries under the following circumstances:

Plaintiff and a fellow seaman were engaged in fitting hatch boards into the hatch opening. While standing on one of the strong-backs, the other seaman pushed a hatch board at the Plaintiff in a careless and negligent manner so that the Plaintiff was caused to lose his equilibrium and fall to the hatch below.

SEVENTH: That the plaintiff thereby became sick, sore, lame and disabled; and has been, and will be confined to his home and bed; has suffered and still suffers great pain and agony; has been and will be prevented from working with the same facility in the future as he has in the past; has lost and will have to lose large sums of money which he otherwise would have earned; has paid out and will have to pay out large sums of money for his medical and surgical treatment and attention, for medicines and for his board and lodging, all to his damage. 14

EIGHTH: That the said injuries sustained by the Plaintiff were not due or caused by any fault or want of care on his part, but were due to the negligence of the Defendant, his agents, officers and/or employees; in that a fellow seaman was negligent and careless in pushing a hatch board at the Plaintiff in such a manner as to cause him to lose his equilibrium and fall to the hatch below; and in that the Defendant, his agents, servants and/or employees were otherwise careless and negligent in the premises. 15

NINTH: Plaintiff sues to recover indemnity for the personal injuries which he sustained; for his mental and physical pains and suffering; for the permanent injuries which will result; for his loss of wages; for the diminution of his

ability to work and labor; for the moneys which he spent for doctors and hospitals, nurses and medical care, and for the moneys which he will spend for the aforesaid in the future in an endeavor to cure himself, by reason of all of which Plaintiff claims damages in the sum of $12,500.00

TENTH: That at all the times hereinafter mentioned, there was and still is in force and effect an Act of Congress known as the Merchant Marine Act, approved June 5, 1920, Section 33 of which provides as follows:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply * * *."

SECOND CAUSE OF ACTION

Plaintiff repeats and realleges all the facts set forth in the "first cause of action", with the same force and effect as though pleaded herein in full and in addition thereto, alleges:

TWELFTH: That as a result of the foregoing, Plaintiff expended, and upon information and belief, will have to expend large sums of money for his maintenance and cure, all to his damage in the further sum of $2,500.00.

WHEREFORE, Plaintiff demands judgment against the Defendant herein in the sum of $15,000.00 on both causes of action, together with the costs and disbursements of this action.

RICHARD M. CANTOR,
Attorney for Plaintiff,
Office & P. O. Address,
51 Chambers Street,
Borough of Manhattan,
City of New York.

19

Notice of Appearance and Demand.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Sir:

PLEASE TAKE NOTICE, That the defendant J. Lauritzen, sued as "Johannes" Lauritzen, first name being fictitious, real name being unknown, hereby appears in the above entitled action, and that we are retained as Attorneys for him therein, and demand that a copy of the Complaint and all papers in this action be served on us at our office, No. 20
80 Broad Street, New York 4, N. Y.

Dated, May 20, 1947.

Yours, &c.,

HAIGHT, GRIFFIN, DEMING & GARDNER,
Attorneys for Defendant,
Office and Post Office Address,
80 Broad Street,
New York 4, N. Y.

To:

RICHARD M. CANTOR, Esq.,
Plaintiff's Attorney,
51 Chambers Street,
New York 7, N. Y. 21

Answer.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

J. Lauritzen, sued herein as "Johannes" Lauritzen, defendant, by Haight, Griffin, Deming & Gardner, his attorneys, answering the complaint of the plaintiff herein, alleges upon information and belief:

ANSWERING THE FIRST CAUSE OF ACTION:

FIRST: Denies each and every allegation of paragraphs First and Eighth of the complaint.

SECOND: Admits the allegations of paragraphs Second, Third, Fourth and Fifth of the complaint.

THIRD: Denies knowledge or information sufficient to form a belief as to the allegations of paragraphs Sixth, Seventh and Ninth of the complaint.

FOURTH: Answering the Tenth paragraph of the complaint, defendant admits that the act referred to was and is in force, but denies that it has any application to this action.

ANSWERING THE SECOND CAUSE OF ACTION:

FIFTH: Defendant repeats and realleges each and every admission, denial and denial of knowledge or information hereinabove set forth with the same force and effect as if herein set forth at length.

SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations of paragraph Twelfth of the complaint.

FURTHER ANSWERING THE COMPLAINT AND FOR A SEPARATE, PARTIAL OR COMPLETE DEFENSE TO BOTH CAUSES OF ACTION, DEFENDANT ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

SEVENTH: That if the plaintiff suffered any injuries, the same were caused or contributed to by the negligence of said plaintiff.

WHEREFORE, defendant demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

HAIGHT, GRIFFIN, DEMING & GARDNER,
Attorneys for Defendant,
By EDGAR R. KRAETZER,
A member of the firm,
80 Broad Street,
New York 4, N. Y.

28

Consent to Serving of Amended Answer.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, the plaintiff, by his attorney, hereby consents to the service of an amended answer by defendant, J. Lauritzen, sued herein as "Johannes" Lauritzen.

Dated: New York, N. Y., May 7, 1951.

29

RICHARD M. CANTOR,
Attorney for Plaintiff.

So ordered:

Dated: New York, N. Y., May 11, 1951.

EDWARD WEINFELD,
U. S. D. J.

Filed 5/11/51.

30

31

Amended Answer.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Defendant, J. Lauritzen, sued herein as "Johannes" Lauritzen, by Haight, Deming, Gardner, Poor & Havens, his attorneys, for his amended answer to the complaint of the plaintiff herein, alleges upon information and belief as follows:

32

ANSWERING THE FIRST CAUSE OF ACTION:

FIRST: Denies each and every allegation of paragraphs First and Eighth of the complaint.

SECOND: Admits the allegations of paragraphs Second, Third, Fourth and Fifth of the complaint.

THIRD: Denies knowledge or information sufficient to form a belief as to the allegations of paragraphs Sixth, Seventh and Ninth of the complaint.

FOURTH: Answering paragraph Tenth of the complaint, defendant admits that the act referred to was and is in force, but denies that it has any application to this action.

33

ANSWERING THE SECOND CAUSE OF ACTION:

FIFTH: Defendant repeats and realleges each and every admission, denial and denial of knowledge or information hereinabove set forth with the same force and effect as if herein set forth at length.

SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations of paragraph Twelfth of the complaint.

FURTHER ANSWERING THE COMPLAINT AND FOR A FIRST, SEPARATE, PARTIAL OR COMPLETE DEFENSE TO BOTH CAUSES OF ACTION, DEFENDANT ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

SEVENTH: That if the plaintiff suffered any injuries, the same were caused or contributed to by the negligence of said plaintiff.

35

FURTHER ANSWERING THE COMPLAINT AND FOR A SECOND, SEPARATE, PARTIAL OR COMPLETE DEFENSE TO BOTH CAUSES OF ACTION, DEFENDANT ALLEGES AS FOLLOWS:

EIGHTH: That at all times mentioned in the complaint, defendant was an individual, a resident of and subject to the laws of the Kingdom of Denmark and at all material times the s/s Randa was registered as a Danish vessel and was flying the flag of Denmark.

NINTH: That the plaintiff herein signed articles of employment in and by which he agreed to be bound by the laws of the Kingdom of Denmark.

36

TENTH: That in the law respecting seamen of May 1, 1923, of the Kingdom of Denmark, which law was, during all the times hereinbefore referred to, in full force and effect, it is provided as follows:

"§ 27.

If a seaman falls sick or received any hurt or injury the master must see that the necessary attendance on

board or on land, including maintenance, medical advice and medicine, is given him.

* * * * * * *

In case a sick seaman is left behind in a foreign country, the master must leave him in the consul's care, or, if there is no consul in the place, he must see that reliable attendance is obtained, besides which the nearest Consul must be informed of the case.

§ 28.

During the currency of the contract a seaman's medical expenses must be defrayed by the owner. 38

* * * * * * *

The provisions, mentioned above in this section shall not apply if the sickness or accident is due to his own fault or neglect or was suppressed at the time when the contract of service was made. Under such circumstances, the seaman must himself defray the medical expenses both before and after the termination of the service, and he shall not be entitled to claim free transport home, besides which the expenses incurred by the owner for the seaman may be deducted from the wages.

* * * * * * *"

"§ 32.

If a seaman on account of sickness, injury, or hurt 39
is prevented for some considerable time from performing his duty, or if he is suffering from an illness which is dangerous for those on board, the master can dismiss him. Besides full wages until the time of leaving, a seaman is, in such a case, entitled to one month's extra wages, if he is a mate or an engineer, otherwise he is entitled to seven days' extra wages, after leaving. If the seaman is a Danish subject and

such seaman was engaged whilst the ship was trading in European waters, cf. 2nd paragraph of § 21, and if he leaves whilst the ship is plying in other waters, he shall be entitled to 2 months' wages if he is a mate or engineer, otherwise he shall be entitled to 1 month's wages.

If the sickness, hurt, or injury is brought about by his own fault or neglect or was suppressed at the time of the engagement, the seaman, whether he is dismissed or not, is only entitled to wages for the time during which he has performed his duty."

"§ 18.

Wages shall run from and including the day on which the seaman commences his service on board, or, if he has to make a journey to the ship from the place of engagement, from and including the day when he commences such journey.

Wages shall be paid up to and including the day on which the service terminates, or if discharge takes place, up to and including the date of discharge, provided that his right to wages has not ceased at an earlier date through illness or other cause.

* * * * * * *"

There is further in full force and effect a law relating to the insurance of seamen against accident of May 20, 1933, which provides for the establishment of a shipowners' insurance fund to take care of obligations beyond those covered by the foregoing seamen's law, not only as to medical treatment, but provides as well for an award of up to 60% of the wages for such period of time deemed proper and in some cases for a lump sum award.

ELEVENTH: That the defendant has in all respects carried out the provisions of the law of the Kingdom of Den-

mark hereinbefore referred to in so far as they refer to the plaintiff herein and has fully and completely carried out his obligations to said plaintiff under the terms of said law.

WHEREFORE, defendant demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant,
By s/ J. M. ESTABROOK,
A Member of the Firm,
80 Broad Street,
New York 4, N. Y. 44

Pre-Trial Order.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

On September 26, 1951, the parties to this action or their attorneys having appeared before the court at a pre-trial conference pursuant to Rule of Civil Procedure 16, the following action was taken: 45

1. IT IS ORDERED that the following amendments to the pleadings are allowed:

NONE.

2. The parties agreed that the trial of this action shall be based upon the pleadings as amended, except that the following issues raised by the pleadings are abandoned:

NONE.

3. The parties stipulated the following facts:

Plaintiff was a member of the crew of the S.S. "Randa", a vessel flying the Danish flag and so registered, and owned and operated by the defendant. Plaintiff signed articles in New York City as an able seaman and shipped from this port for a voyage to South America and other places. The vessel eventually returned to New York. The plaintiff was a Danish citizen, a resident of Denmark and was temporarily in New York when he signed up. On the voyage he was injured while the vessel was in Havana, and while putting a cover on a hatch, on October 7, 1946. Plaintiff was hospitalized at the Anglo-American Community Hos-
47 pital at Havana, Cuba, and was there treated from October 7, 1946 to November 18, 1946. Plaintiff was returned to New York as a passenger on another vessel of defendant, arriving here November 28, 1946. He was treated at Ellis Island Marine Hospital from November 28, 1946 to December 9, 1946 as an in-patient. From December 9, 1946 to January 9, 1947, plaintiff received certain treatment as an out-patient at Long Island College Hospital in Brooklyn, N. Y.

All transportation and hospitalization was paid by defendant. Plaintiff received his wages only until October 7, 1946. His rate of pay was $20.70 per week, plus overtime, bonus and board and lodging. The defendant paid plaintiff maintenance at the rate of $4.80 a day for the
48 period, December 9, 1946 to January 9, 1947. Plaintiff returned to work as a seaman serving aboard the S.S. "Cornelius Maersk", as an able seaman, on Jan. 27, 1947.

4. The parties agreed that the following documents may be received in evidence:

The shipping articles which were marked Ex. A on July 11, 1949, during the deposition of plaintiff.

The clinical report of the Anglo-American Hospital of Havana.

The records of the Ellis Island Marine Hospital and the Long Island College Hospital.

As to Clinical and Hospital records the parties reserve the right to object to any hearsay statement contained therein, and to any irrelevant and immaterial matters.

5. The parties agreed to limit the number of expert witnesses as follows:

For plaintiff—Dr. Samuel Frant or Dr. Nathan Tandet.

For defendant—Dr. Charles E. Farr and Dr. Irving Schwartz. An expert stevedore. An expert on Danish law.

6. The following are all of the claims for damages or 50
for other relief asserted by the plaintiff in this action, as of the date of this conference:

(1) Loss of wages to date.

(2) No claim that earning capacity has been impaired.

(3) Pain and suffering to date and in the future.

(4) Maintenance.

(5) No medical expenses.

(6) Permanency of injury.

7. The parties also agreed on the following matters:
NONE.

8. The issues to be tried are formulated by the court as 51
follows:

(1) Was plaintiff injured through any act of negligence of another member of the crew, who was handling one end of the hatch board at the time of the accident?

(2) Did any negligent act of the plaintiff contribute to or help bring about the accident; and if so to what extent?

(3) What were plaintiff's injuries?

(4) What are plaintiff's damages?

(5) Does the Jones Act apply to and govern plaintiff's right of recovery, if any?

(6) Does Danish law apply to and govern plaintiff's right of recovery, if any?

Dated, September 27, 1951.

VINCENT L. LEIBELL,
United States District Judge.

RICHARD M. CANTOR, by MAXWELL OPPER,
Att'y for Plaintiff.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
By J. M. ESTABROOK,
Attorneys for Defendant.

Stipulation Amending Complaint.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties hereto, that paragraph "Sixth" of the Complaint herein be amended to read as follows:

"SIXTH: That on or about the 7th day of October, 1946, and while said vessel was on navigable waters and while Plaintiff was engaged in the course of the duties assigned to him and in furtherance of Defendant's interests, he was caused to sustain personal injuries under the following circumstances:

Plaintiff and a fellow seaman were engaged in fitting hatch boards into the hatch openings. While Plaintiff was standing on one of several hatch boards already fitted into the strong backs, the fellow seaman handling the other end of the hatch board held by the Plaintiff pushed it against the Plaintiff in a careless and negligent manner so that Plaintiff was caused to lose his equilibrium and fall to the hatch below"; and

IT IS FURTHER STIPULATED AND AGREED, that paragraph "Sixth" of the Complaint, as amended, is deemed denied by the Defendant; and

IT IS FURTHER STIPULATED AND AGREED, that the pre-trial Order previously entered herein be modified so as to include herein in item #1 the amendment to the Complaint set forth herein.

Dated: New York, November , 1951.

RICHARD M. CANTOR,
Attorney for Plaintiff.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant.

So ordered: Nov. 16, 1951.

VINCENT L. LEIBELL,
U. S. D. J.

Filed 11/16/51.
U. S. D. C.

58

Stipulation as to Danish Law.

(Defendant's Exhibit C.)

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto, that if an expert on Danish Law were called by the defendant to testify on his behalf, said expert would testify as follows:

59

According to Danish law a seaman injured on a Danish vessel through the fault or negligence of a fellow seaman has no rights against the shipowner except as set forth below:

1. When a seaman on a Danish ship is injured or becomes ill, regardless of any lack of fault or negligence on the part of the shipowner, the shipowner is required to pay the following benefits:

(a) Hospitalization and medical expenses.

(b) One month's wages, commonly known as "sick wages".

(c) Seven days additional wages, provided the articles call for seven days notice of termination of employment on the part of the seaman and on the part of the shipowner.

60

(d) Maintenance for all the time the seaman is not confined to a hospital and not fit for duty for a period of twelve weeks after the injury.

2. In the event a seaman is not completely cured within twelve weeks of the injury, he is also entitled to further maintenance and an allowance for disability from the Directorate of Insurance Against the Consequences of Accidents.

Such an allowance would amount to Kr. 515 for permanent partial 5% disability of the left wrist and ankle, Kr. 1,029 for permanent partial 10% disability of the left wrist and ankle, and Kr. 1,544 for permanent partial 15% disability of the left wrist and ankle.

3. Claims against the shipowner may be made directly. Claims against the Directorate may be made either directly or through the Danish Consulate.

4. This stipulation may be offered in evidence by either party as proof of the contents hereof without further proof.

Dated, New York, N. Y., November 15, 1951. 62

RICHARD M. CANTOR,
Attorney for Plaintiff.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant.

So ordered: Nov. 26, 1951.

SIDNEY SUGARMAN,
U. S. D. J.

Filed 11/26/51.
U. S. D. C.

63

64

Testimony.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Before: HON. EDWARD J. DIMOCK, *D. J.*, and a Jury.

New York, December 5, 1951;
4.15 o'clock P. M.

APPEARANCES:

65 RICHARD M. CANTOR, Esq., Attorney for Plaintiff; RICHARD M. CANTOR, Esq., and MORRIS HIRSCHHORN, Esq., of Counsel.

HAIGHT, DEMING, GARDNER, POOR & HAVENS, Esqs., Attorneys for Defendant; JAMES M. ESTABROOK, Esq., and DAVID P. H. WATSON, Esq., of Counsel.

(A jury was duly impaneled and sworn.)
(Adjourned to December 6, 1951, at 10.30 A. M.)

---

66 New York, December 6, 1951;
10.30 o'clock A. M.

(Mr. Cantor opened the case to the jury on behalf of the plaintiff.)

(Mr. Estabrook opened the case to the jury on behalf of the defendant.)

THE PLAINTIFF'S CASE.

EVALD JOHANN LARSEN, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination by Mr. Cantor.

Q. Mr. Larsen, what is your full name? A. Evald Johann Larsen.

Q. How old are you? A. 37 years old.

Q. What is your occupation or your trade? A. Able seaman.

Q. Able-bodied seaman? A. Yes, sir. 68

Q. Have you a license or certificate to that effect? A. Yes, I have.

Q. Issued by what government? A. What?

Q. Issued by what government, by what country? A. By the Danish country.

Q. How long have you had your able-bodied certificate? A. Since 1940.

Q. Since 1940, did you say? A. 1940 as an able-bodied seaman.

Q. Now, before receiving your certificate as an able-bodied seaman, did you sail in any other capacity? A. Yes, sir.

Q. In what other capacity did you sail? A. Ordinary seaman.

Q. When did your service on vessels as an ordinary 69 seaman commence? A. In Denmark.

Q. In Denmark, yes, but in what year? A. The first time I sailed was in 1935.

Q. So that you have been sailing either as an ordinary or as an able-bodied seaman for the past fifteen or sixteen years? A. Yes, sir.

Q. And you had been sailing for about eleven years before this accident occurred; is that right? A. Yes, sir.

Q. Do you remember July of 1946 when you signed on the SS. Randa? A. Yes, sir.

Q. Where were you living at the time? A. I was living here in New York.

Q. And did you ship on this vessel through a Commissioner? A. Yes, sir.

Q. In what capacity did you ship on the vessel, what job did you take? A. Able seaman.

Q. And what were the wages that you contracted to receive? A. (No response.)

71 Q. How much did they pay you per month? A. In dollars, about $80 or something.

Q. About $80 a month? A. Yes, sir.

Q. And did your agreement with them also contemplate overtime payments? A. Yes, sir.

Q. In overtime payments on this vessel and on similar vessels, what were your average earnings? A. In overtime, about $.50.

Q. 50 cents an hour, did you say? A. Yes, sir.

Q. Is that what you meant? A. Yes, sir, in overtime.

Q. Well, how much would that average a month in the course of the usual voyage? A. In overtime, in a month?

Q. Yes, how much would you earn as an average? A. That is different all the time.

Q. Well, take an average. Take them all together. A.

72 About $50, or something like that.

Q. About $50 a month additional for overtime? A. Yes, sir.

Q. Now, when you shipped on the Randa do you recall the exact date that you signed the articles? A. I don't remember the date I shipped.

Q. Do you know the month? A. Yes, sir.

Q. What month was it? A. July.

Q. July, and the year was what? A. 1946.

Q. Do you know whether it was the beginning of the month; or the middle, or toward the end? A. It was about the middle of the month.

Q. And did the vessel remain here in New York for a period of time before it actually sailed? A. Yes, sir.

Q. How long was it here, or, if you can recall, do you know the exact date when the ship left New York? A. No, I can't remember the date.

Q. Did the ship leave New York around the end of July? A. Yes.

Q. Do you know the voyage that was contemplated by the articles you signed? A. (No response.)

Q. Do you know the scope of the voyage? Do you know what I mean by "scope"? A. (No response.) 74

Q. What ports were you to go to, and what ports or what port were you finally to return to when the ship ended its voyage? A. What time I returned?

Q. The voyage began in New York, didn't it? A. Yes, sir.

Q. And were you supposed to go to South American ports? A. Yes, sir.

Q. And some West Indian ports too? A. Yes, sir.

Q. And where was the voyage to end, at what point? A. (No response.)

Q. If you had stayed on the ship, where would the voyage end? A. In South America.

Q. What would be the last port which the ship would make? A. The last port was Coquinbo. 75

Q. Was it understood that the ship was to eventually return to New York? A. What?

Q. Was the ship supposed to come back to New York? A. Yes, sir.

Q. After it finished going to all these ports? A. Yes, sir.

Q. And that is where you were to be paid off; isn't that so? A. Yes.

Q. Did there come a time when the ship came to the Port of Havana, Cuba? A. (No response.).

Q. Do you remember when the ship came to Havana, Cuba? A. About the 5th of October.

Q. About the 15th of October? A. No; the 5th.

Q. The 5th of October? A. Yes.

Q. And how long did the ship remain in Havana, Cuba? A. Two days.

Q. Was there a time on the 7th day of October, 1946, when preparations were made for the ship to sail? A. Yes, sir.

Q. And you were working in the deck department? A. Yes, sir.

77 Q. Were you working on day work or sea watches? A. Day work.

Q. What hours does a day's work take in? A. From 7.00 in the morning to 5.00 o'clock in the evening.

Q. From 7 o'clock in the morning until 5 o'clock in the afternoon? A. Yes, sir.

Q. Anything beyond that either way is overtime; is that right? A. Yes.

Q. Now, during the afternoon some time did you receive orders from anybody to cover a hatch? A. Yes, from the third mate.

Q. From the third mate? A. Yes.

Q. Did you have a boatswain on that vessel? A. No, there wasn't a boatswain on that vessel.

78 Q. So the third mate had charge of you men in the deck department on that day? A. Yes, sir.

Q. Do you remember his name? A. I forget his name.

Q. But you know he was the third mate? A. Yes, sir.

Q. And you received all your orders from him that day, didn't you? A. Yes, sir.

Q. Now, before you got to the No. 1 hatch had you received orders to cover another hatch? A. Yes, one hatch before.

Q. And who worked that hatch with you? A. The third mate.

Q. Was there another seaman with you? A. Yes, sir.

Q. Do you remember the name of that seaman? A. No, I can't remember his name.

Q. Can you describe him with respect to his nationality or his age? A. (No response.)

Q. How old was he, would you say? A. He was about sixty-four or sixty-five years old.

Q. Was he Swedish or Danish? A. He was Swedish.

Q. And was he an able-bodied seaman? A. No, he was a fireman.

Q. He was a fireman? A. Yes, he was a fireman. 80

Q. But had he shipped in the deck department or the engineroom department on this voyage? A. He was in the deck department.

Q. He was in the deck department? A. Yes, he was in the deck department.

Q. Was there anybody else besides the ones you mentioned, yourself and this Swedish seaman and the third mate? A. That's right, nobody else.

Q. Now, I am speaking about the other hatch which you covered, not the one in which the accident happened. How did you go about covering that hatch? A. First I took the strongbacks and placed it there. The third mate held the winch and me and the other man placed the strongbacks on the hatch.

Q. In other words, a cable or a runner went from the 81
drum of the winch through the block and tackle and down to a hook which you fastened into some ropes which held the strongbacks; is that right? A. That's right.

Q. And then he, by running the winch, pulled these strongbacks above the level of the deck; is that correct? A. Yes, he lifted the strongbacks.

Q. And then you guided them over to the— A. We guided them over to the hatch.

Q. And placed them in the hatch? A. And placed them in the hatch.

Q. And after you did that, did you and the other man then fit into these hatches the strongbacks? A. Yes, sir.

Q. Did the third mate see the way in which you put the hatch boards in? A. Yes, he was there.

Q. Now, how did you put in those hatch boards? Will you describe to the ladies and gentlemen of the jury the way which was used by you and this Swedish seaman to put the hatch boards into the different sections? A. Yes.

Q. Tell them what you did. A. (No response.)

Q. That is on the other hatch. A. We put the hatch board alongside the ship below the strongbacks—over the strongbacks, and first we took three hatch boards from the deck, and then we placed the other hatch board up on it.

Q. You put another supply of hatch boards on those three hatch boards; is that right? A. Yes.

Q. Just a moment. You say you put another one of the hatch boards onto these three hatch boards? A. Yes.

Q. Is that right? A. Yes.

Q. All right. Then what happened then? A. Then we placed about four more boards up on the three hatch boards, and then we put them onto the hatch.

Q. You put them onto the hatch? A. Yes.

Q. Tell us how you went about placing those four hatch boards onto the hatch. A. Yes.

Q. One at a time? A. Yes.

Q. What did you do and what did the other fellow do? A. I held one hand on the hatch board and the other fellow, he held the other end of the hatch board.

Q. Yes. A. Then we lifted them over onto the deck and placed them on the deck, and placed them where they should be.

Q. Yes. A. Then we took about four other hatch boards and placed them over the other hatch boards.

Q. It is at this point I want you to tell us what you did after you placed the hatch boards on those other boards. A. The three hatch boards, you take one hatch board——

Q. One at a time? A. Yes.

Q. And you placed it in that opening? A. Yes.

Q. Who was the fellow who went up on the deck to help you with the hatch boards? A. It was the Swedish seaman who went up.

Q. And he was where? A. He was helping with the hatch boards.

Q. But where was he? Was he on the deck? A. He was on the deck.

Q. He was facing you, was he not? A. Yes.

Q. And you were facing him? A. Yes.

Q. Did he seize one end of the hatch boards? A. Yes.

Q. He kept one end? A. Yes. 86

Q. And you kept or grabbed the other end? A. Yes.

Q. Now, when you hold those hatch boards how do you hold them? A. I hold it like that (indicating).

Q. When you say you hold it like that, you mean you held one end next to your body? A. Yes.

Q. Or stomach? A. Yes, held it like that, tight.

Q. How did you walk? A. We were walking toward the hatch, so that one fellow was on the deck and I was on the hatch.

Q. In other words, both of you were walking sideways? A. Yes.

Q. You placed one end there at a time? A. One end at a time.

Q. And did the third mate see you placing the hatch boards in there in that way? A. Yes. 87

Q. Did he correct your method of placing the hatch boards? A. No.

Q. Did he tell you it was wrong? A. No.

Q. Mr. Larsen, how many times during your sea voyages, would you say, spreading over a period of eleven years, up to the date of this accident—is that right? A. Yes.

Q. During that time did you cover hatches in a different way, or in a different method? A. No.

Q. What is that? A. I always used to cover the hatches like that.

Q. And did you cover hatches of one kind or another? A. Yes.

Q. And would you say that you covered hatches hundreds and hundreds of times? A. Yes, and about a thousand times.

Q. It is ordinary procedure, isn't it? A. Yes.

Q. And every time you come to port they have to open the hatches? A. Yes.

Q. Isn't that right? A. Yes.

Q. To get the cargo out? A. Yes.

89 Q. And they also have to open up the hatches? A. Yes.

Q. To put the cargo in? A. Yes.

Q. And a ship can't sail unless the hatches are covered? A. Yes.

Q. Is that correct? A. Yes.

Q. How many hatches to the ship ordinarily are there? A. Well, on this vessel there were four hatches, in this ship.

Q. Is this a Liberty ship? A. No.

Q. No? A. No.

Q. But you say there were four hatches on this ship? A. Yes.

Q. And every one of them had three sections, right? A. There are three sections, yes.

Q. And they all have to be covered before the ship sails?

90 A. Yes.

Q. And you say that you have covered hatches hundreds of times? A. Yes.

Q. And perhaps a thousand times? A. Yes.

Q. During the eleven years that you have been at sea? A. Yes.

Q. Now, during that period have you ever used any other method than the one that you have described to the jury here? A. No.

Q. Have you ever seen anybody else use any other method? A. No.

Q. And the mate saw you use this method on the hatches before? A. Yes.

Q. Now, let us get down to this particular operation, Mr. Larsen. A. Yes.

Q. Did there come a time during the afternoon when the third mate told you to cover the No. 1 hatch? A. Yes.

Q. What exactly did he say to you and the other fellow? A. He said that we would have to start covering the No. 1 hatch.

Q. And that, as you understood it, was an order? A. Yes.

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Q. Didn't you understand it to be an order? A. Yes.

Q. And the order was addressed or spoken to the other Swedish seaman as well, wasn't it? A. Yes.

Q. And you worked with him together all that afternoon? A. Yes.

Q. All right. Then what did you do and what did the seaman do and what did the third mate proceed to do about that order? A. He took the winch, the third mate took the winch, and he lifted one board up on the hatch, and then me and the other man placed them up on the hatch, the strongbacks.

Q. And when you got through placing these strongbacks, how many sections did you have in the No. 1 hatch? A. Three sections.

Q. Three sections? A. Yes.

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Q. And that was the same method that you used with the other hatches? A. Yes.

Q. And was that the same method of covering the hatch that you used in all other ports? A. Yes.

Q. The same method, was it? A. Yes.

Q. And the same type of hatches? A. Yes.

Q. And did the officers always see you all the time or every time that you did it? A. Yes.

Q. Is that correct? A. Yes.

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Q. After you got the sections fitted in, what did you and the Swedish seaman proceed to do? A. We placed three boards from the deck, or over the hatch boards and over the deck and placed them over the hatch.

Q. You say you took three hatch boards and placed them over the hatch? A. Yes.

Q. Which side of the hatch was it? A. Port side.

Q. The port side? A. The port side.

Q. The port side is the left side of the ship, is it not? A. Yes.

Q. That is the left side looking toward the front or the bow of the vessel? A. Yes.

95 Q. That is the port side, right? A. Yes.

Q. And after you placed those three boards in position what was the next thing you did? A. And then the Swedish seaman and I, we placed about four boards up over the three boards.

Q. And then after you did that what did you do? A. Then I opened the hatch and the Swedish fellow, he is still on deck in the bow of the boat.

Q. Yes? A. And then we started to place the other four boards.

Q. Did you place any of the other four boards in place before the accident happened? A. Yes.

Q. How many? A. I placed one or two.

Q. And was the officer or third mate there when you were carrying that board? A. He left there for about
96 four or five minutes and then he was there.

Q. Well, did he see you carrying that board in the open space? A. Yes.

Q. How did you carry that board? A. I carried that board like that (indicating); I was at one end of the board and the Swedish fellow, he held the other end of the board.

Q. Were you carrying that board the same way that you carried the boards on other occasions when the accident happened? A. Yes.

Q. And was the third officer there? A. Yes.

Q. And did he say anything to you about the way you were carrying the board? A. No.

Q. In other words, did he correct you? A. No.

Q. Did he tell you that you were doing it wrong? A. No.

Q. Did he suggest any other method that you should use? A. No.

Q. Now let us get down to the time when the accident happened. A. Yes.

Q. Tell us what happened after you placed the one board in that way and then when you took another board. A. Yes. 98

Q. What did you do about it? A. Then when I was walking sideways to place the board on the hatch, when I started placing it on the hatch, then I got a push in my stomach.

Q. You got a push? A. I got a push in my stomach.

Q. Tell us how you happened to get a push in the stomach. A. Yes.

Q. What did the other fellow do? A. Well, he was walking in front of me.

Q. He was walking toward you, is that right? A. Yes.

Q. And did you expect him to do that? A. No.

Q. Did you see him doing it? A. Yes.

Q. Did you try to do something when you saw him doing it? A. I couldn't do anything. I fell.

Q. There was nothing you could do about it? A. No. 99

Q. Did you try to stop yourself from falling? A. Yes.

Q. And you did not succeed, did you? A. No.

Q. As you were standing there and you were facing this other seaman, that is the way you were facing, weren't you? A. Yes.

Q. Where was your back? Was your back toward the end of the hatch cover or to an open space? A. My back was to the open space.

Q. And that open space would be the second section of the hatch? A. Yes.

Q. Or the middle section of the hatch? A. Yes.

Q. And when you lost your balance after this push in the stomach, what happened to you? A. I fell backward into the hatch.

Q. Down below? A. Down below.

Q. Is that the 'tweendeck where you fell? A. No, the bottom.

Q. The bottom of the ship? A. Yes.

Q. What parts of your body were struck when you fell in that manner to the bottom of the ship? A. My left wrist and my left foot.

Q. Did you strike your face and head? A. Yes, and
101 I struck myself on the left side of my face here (indicating).

Q. And when you hit the bottom of the ship as you have just told us, did you become unconscious? A. What?

Q. Do you know anything about being unconscious? A. Yes.

Q. You do? A. Yes, that is unconscious.

Q. You lost consciousness? A. Yes.

Q. Did you black out? A. Yes, black out.

Q. Have you any idea how long you were out? A. I don't know how long, but I guess a few minutes, four or five minutes.

Q. And did there come a time when you eventually came to? A. There were some officers there who helped me.

Q. What did you say? A. There were two officers there
102 who helped me.

Q. There were two men helping you up at the time? A. Yes.

Q. Two men? A. Yes.

Q. So at that time how did you feel? Did you feel pain in any part or parts of your body, Mr. Larsen? A. Yes, I felt pain very much in my wrist and in my foot.

Q. What about your hip and your face, or your head? A. I felt very dizzy in my head.

Q. And what did these two workers do for you? A. They placed me up on a sling.

Q. They hauled you up in the sling? A. One man hauled up the sling and I came up with the winch.

Q. In other words, they hauled you up or lifted you up like they would cargo? A. Yes.

Q. From the bottom of the vessel? A. Yes.

Q. You were then lifted up through the opening of the hatch, is that right? A. Yes.

Q. You were carried up to the deck? A. Yes.

Q. And somebody lowered the sling and you were placed on the deck? A. Yes.

Q. And after you were placed on the deck what did they do for you? A. They helped me down the gangway, the two fellows. 104

Q. Did you walk with them? A. No.

Q. They carried you? A. Yes.

Q. You did not use your legs in any way, did you? A. No.

Q. And when they carried you down the gangway, what did they do for you when you got to the deck? A. After that they got an ambulance, and they put me in the ambulance.

Q. And when they put you in the ambulance, then where did you go? A. I went to the hospital, the Anglo-American Hospital.

Mr. Cantor: What is the name of that hospital?

Mr. Estabrook: Anglo-American.

Q. That is the Anglo-American Hospital? A. Yes. 105

Q. The Anglo-American Community Hospital? A. Yes.

Q. In Havana, Cuba? A. Yes, sir.

Q. And when you got there did they put you to bed? A. Yes.

Q. Take your clothes off, and so on? A. Yes.

Q. And after they did that what was done for you? A. Then they put a cast on me. The next day they put a cast on.

Q. Did you say the next day or a day and a half later? A. The next day.

Q. The next day? A. Yes.

Q. Did they take pictures of you? A. They took X-ray pictures of me.

Q. They took X-rays? A. They took X-rays.

Q. When did they take the X-rays? When did they take the X-ray pictures, the same day? A. Yes, the same day.

Q. Where did they take the X-ray pictures of? What parts of your body did they take the X-ray pictures? A. My hip, my wrist, left wrist, and left foot.

Q. And the next day what did they do for you? A. They put a cast on my left arm from here to here (indicating), and on my left leg from the foot to the knee.

Q. Up to your knee? A. Yes.

Q. In other words, that solid cast was on you from the tips of your fingers to here (indicating)? A. From the tips of my fingers, yes.

Q. And another one from your toes up to your knee? A. Yes.

Q. How did you feel during that time, Mr. Larsen? Did you feel pain in any other parts of your body? A. I felt very much pain in my wrist and ankle.

Q. What about your head? A. And some headaches, too.

Q. Do you recall how long you were in the Anglo-American Community Hospital before you were discharged? A. I was there about one and a half months.

Mr. Cantor: Well, for the purposes of the record I think I had better offer this at the present time so we will have the exact date.

I offer the record of the Anglo-American Community Hospital.

Mr. Estabrook: No objection.

Mr. Cantor: Will you mark this, please?

(Marked Plaintiff's Exhibit 1 in evidence.)

Q. This record shows that you were discharged on November 18th of 1946. A. Yes.

Q. That was about one month and eleven days, approximately? A. Yes.

Q. And that covers the period that you were there? A. Yes.

Q. Now, when you were discharged from this hospital did you go on the ship again? A. I went as a passenger. I was a passenger from Havana to New York.

Q. Was that another one of the ships owned by this defendant? A. Another one of the same company's ships.

Q. The same company? A. Yes.

Q. They took you from Havana to New York? A. To 110
New York.

Q. Is that right? A. Yes.

Q. Do you recall when you arrived in New York? A. I can't remember the date.

The Court: November 28th it has been stipulated.

Mr. Cantor: All right.

Mr. Estabrook: Here are the medical records.

Mr. Cantor: Thank you.

Q. When you arrived in New York were you then admitted to the United States Marine Hospital, the Ellis Island, New York, branch? A. Yes.

Q. And the date of that admission is given as November 26th, at around 2.45 P. M. That is correct, no doubt? A. Yes. 111

Q. Is that correct? A. Yes.

Q. Do you know, or, before I get to that, was there anything else that they did for you in the hospital in Cuba other than what you have described? A. No.

Q. There were some X-rays taken and they put a cast on? A. Yes.

Q. Was there any other type of treatment? A. No.

Q. Did you get any massage or medicines of any kind? A. No.

Q. You just remained quiet? A. Yes.

Q. Until you left? A. Yes.

Q. When you got to New York, as I have just developed, you were admitted to the Marine Hospital in Ellis Island? A. Yes.

Q. And when you got there what did they do for you? A. They took off my cast.

Q. Yes? A. The cast of my left arm, and on my left foot.

Q. Did they take that off as soon as you got here, or did they wait some time? A. They took the cast off about two days later.

113 Q. And what did they do for you? A. And then they told me to put my foot in warm water.

Q. They told you what? A. They took my left foot and put it in warm water, and to put my wrist in warm water.

Q. They gave you baths in warm water? A. Yes.

Q. Were they called whirlpool baths by any chance? A. What?

Q. Did they call them whirlpool baths? A. Yes.

Q. Is there anything else besides that, that is, besides these baths, that they did for you to help you recover? A. No.

Q. Did you get any diathermy treatment? A. I got X-rays there, too.

Q. Yes. How long did you stay at the Marine Hospital at Ellis Island? A. I came out on the 9th of December.

114 Q. Now, when you were discharged from the Marine Hospital on December 9th where did you go? A. I go to the company.

Q. Where? A. To the company of the ship.

Q. Now, without going into any conversations that you may have had there, did they make certain payments to you at that time? A. Yes, sir.

Q. Did you get a sum equivalent to seven days' wages? A. I was paid for about three weeks, or something like that. I got paid for three weeks.

Q. What was that? A. I got paid for three weeks and something.

Q. I don't understand you, Mr. Larsen. My question to you is, or maybe you can help out on this. I thought perhaps you could give me some idea of what was paid to you. A. (No answer.)

Mr. Cantor: Well, we will straighten it out.

Q. Now, when you went to the company offices did they make you any payment of any kind? A. (No answer.)

Q. Did they give you any money? A. Yes.

Q. How much money did they give you and for what purpose? A. $4.80 a day. 116

Q. They gave you $4.80 a day? A. Yes.

Q. At the time they gave you that were you staying at the Swedish Seamen's Home? A. Yes.

Q. And were you at that time taking out-patient treatment at the Long Island College Hospital? A. Yes.

Q. For how many days did they give you $4.80 a day? A. I can't remember how many days, but about fourteen days, or less than three weeks.

Q. About how much? A. Fourteen days.

Q. Fourteen days would be two weeks. A. Two weeks or three weeks. I can't remember that.

Q. About three weeks? A. Yes, sir.

Mr. Cantor: All right. We will take that subject to correction as to what the real figures are. 117

Q. Now, did they also pay you a sum of money for wages? A. Yes.

Q. Was that to cover seven days' wages? A. Yes.

Q. Now, before that and when you were in Havana, Cuba, did you receive wages from this company to cover what work you had done up until the day of the accident on October 7, 1946? A. Yes, sir.

Q. You were paid until October, 1946? A. Yes, sir.

Q. Were you paid anything beyond that time? A. Seven days' extra time.

Q. Just the seven days you are talking about— A. Yes.

Q. —was all that you received as wages after October 7, 1946? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Now, during the course of our discussion you mentioned the fact that you were also treated at the Long Island College Hospital? A. Yes.

Q. You apparently went there for treatment, didn't you? A. Yes.

Q. Who told you to go there? A. The captain of the ship
119 that I was a passenger on to New York sent me to Ellis Island.

Q. He was acting for this company? A. Yes.

Q. Is that right? A. Yes.

Q. How long did you take treatment at the Long Island College Hospital? A. I left there after about three times.

Q. Over what period of time? A. What? —

Q. Well, let me put it this way: from the time you first started until the time you took your last treatment— A. Yes.

Q. —how much time went by? A. It was about three weeks.

Q. Three weeks? A. Yes.

Q. And you were an out-patient, weren't you? A. Yes.

120 Q. Out-patient treatment means that you did not stay in the hospital? A. No, I went out.

Q. You were stopping at the Swedish Seamen's Home? A. Yes.

Q. Now, at the end of three weeks what did you do? A. They then said that I was fit for duty.

Q. They said you were fit for duty there? A. Yes.

Q. Did you feel fit for duty? A. Yes, I felt that I was fit for duty at this time.

Q. Did you go back to work thereafter? A. Yes, about a week after, something like that.

Q. And do you know the date or the exact date when you shipped out once more? A. No, I can't remember the date exactly, but it was in January.

Q. In January? A. The middle of January.

Q. About the middle of January, 1947? A. Yes.

Q. Do you know the name of the vessel you shipped on? A. Yes.

Q. What was the name of the ship? A. The Cornelius Maersk.

Q. In what capacity did you ship out on this vessel? A. I was an able-bodied seaman.

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Q. Able-bodied seaman? A. Able-bodied seaman.

Q. And did you ship out the same way that you shipped out before? A. Yes.

Q. Have you been shipping out on other vessels since that time, Mr. Larsen? A. Yes, for the most part of the time.

Q. What is that? A. The most part of the time.

Q. You ship out fairly regularly? A. Yes.

Q. Considering the nature of your calling, is that right? A. Yes.

Q. Now, Mr. Larsen, you have testified that you received injuries to your wrist? A. Yes.

Q. And to your leg? A. Yes.

Q. And to your head? A. Yes.

Q. Will you tell the jury and the Court whether you 123 have any difficulty, or what experience you have had, with respect to these injured parts of your body at the present time? A. Yes.

Q. I mean by at the present time, this current period. A. Yes.

Q. Tell us about that. A. Yes.

Q. Do you understand my question? A. Yes.

Q. How do you feel about it today, or where do you feel any pain today? Let us put it that way, or how do

you feel? A. Sometimes I have very much pain in my wrist and in my left foot, and most of the time in bad weather, or something like that, and about four or five times during the month I have very much pain in the head, headaches.

Q. You have headaches? A. Headaches, yes.

Q. How do those headaches manifest themselves to you? Are they painful? How do you feel? A. They are most painful.

Q. Do you ever get headaches when you are aloft on a vessel? A. Sometimes when I am aloft I get headaches, too.

Q. And what do you do at such times? A. I have to
125 go down, and after I go down for a while I would go back again.

Q. You, as an able-bodied seaman, have certain duties that you must perform? A. Yes.

Q. On a vessel? A. Yes.

Q. And among those duties are you required to go aloft from time to time? A. Yes.

Q. Is that a duty that is peculiarly the duty of an able-bodied seaman? A. Yes.

Q. What do you have to go aloft for? What is the purpose of your going aloft on a ship? A. That is very different work.

Q. Well, what are you required to do? Are you required to paint up there sometimes? A. Paint.

Q. Well, do you attach lines, too? A. Yes.

126 Q. And blocks? A. Yes.

Q. And are you required to go up there on the boatswain's ladder sometimes? A. Yes, on the boatswain's ladder.

Q. And whenever there is an occasion to have you go up there to do something? A. Yes.

Q. And are those times when you are required to go aloft fairly frequent in the course of your duties as an able-bodied seaman? A. Yes.

Q. Now, these pains in your wrist and leg that you talked about, and your foot, and the headaches, do they interfere in any way at all with the execution of your duties? A. What?

Q. Do they bother you in your work? A. Yes.

Q. How do they bother you, or how does it interfere with your work? A. I feel a little dizzy sometimes.

Q. Do you feel pain when you have to use your wrist and leg? A. Yes.

Q. During the course of your work are you required to be on your feet and on your legs? A. Yes.

Q. Do you have to stand wheel watches? A. Yes.

Q. And during those wheel watches you are on your feet 128
all the time, aren't you? A. Yes.

The Court: We will take a short recess now.

Mr. Cantor: All right.

(Short recess.)

Mr. Cantor: Your Honor, I understand that at some point Mr. Larsen failed to keep his voice up enough so that some of the jurors may have missed some of his testimony, and I don't know just where we fell from grace and where to start in.

The Court: I imagine the reporter can help there, and we can have the reporter read it over. Do you want him to start reading it over again?

Mr. Cantor: Well, I will leave that to the members of the jury, because I don't know just where the wit- 129
ness began to get faint. Would your Honor address an inquiry to the jury and ask them what they would like to have us do?

The Court: What would you like at this time?

The Jurors: We heard it.

Mr. Cantor: Or we could have repeated where you did not hear.

The Jurors: We heard it.

Mr. Cantor: The court attendant just told me that, your Honor, and that is why I am talking about it or bringing the point up.

A Juror: We could hear all right.

Another Juror: Yes.

Mr. Cantor: All right, then.

By Mr. Cantor.

Q. Now, Mr. Larsen, have you ever had any injury before you had this accident? A. No.

Q. Before you had this accident to your wrist or your leg? A. No.

Q. Is it your left wrist and your left leg? A. Yes.

Q. Or to your face and head, did you ever have any injury? A. No.

131 Q. And when you signed on this ship were you in perfect physical condition? A. Yes.

Q. You had the full use of all your limbs and body? A. Yes.

Q. And so on, is that right? A. Yes.

Mr. Cantor: I think that is all.

Cross-examination by Mr. Estabrook.

Q. Mr. Larsen, when you signed on the Randa in New York you were in New York temporarily, were you not? A. Yes, sir.

Q. And your home is in Denmark, is it not? A. Yes, sir.

Q. Now, I show you a paper and ask you if this is not the article you signed in New York (handing)? A. Yes.

132 Q. And you can recognize your signature on that? A. Yes.

Mr. Estabrook: I offer this Defendant's Exhibit A for Identification, marked in July, 1949, in evidence.

Mr. Cantor: No objection.

(Marked Defendant's Exhibit A in evidence.)

Defendant's Exhibit A.

(Bound in opposite.)

Skibets Registrerings-Bogstaver: O.Z.P.H. · Skibets Kontrol-Nr. ~~120~~ Def 69 A Dansk
Dok 11/49
115 №

Skibsbemandingsliste

for dansk { ~~Damp-~~ Motor- ~~Sej-~~ } skib "RANDA"

af Esbjerg, som efter Maalebrev af maaler

1555 – Reg. Tons Brutto og har Maskiner af I.H.K.

Rederiet { Navn: J. Lauritzen
Hjemsted: København

ført af Skibsfører ~~Eli Anton Hansen~~ A. Hansen
~~Jens Holger Mikkelsen~~
A. H. Lorentzen.

Skibsmandskabet, der er antaget paa Grundlag af de i Sømandsloven indeholdte Bestemmelser og iøvrigt i Overensstemmelse med den nærværende Skibsbemandingsliste for hver især tilførte Hyreaftale, tæller 22 Personer.

For det i denne Liste anførte Skibsmandskab har jeg til enhver Tid at gøre Rede i Overensstemmelse med de om Forhyring og Mønstring af Skibsmandskab gældende Love og Bestemmelser.

A. Hansen
Skibsfører.
~~Jes Mikkelsen~~
A. H. Lorentzen

Fartscertifikat gyldigt til

i Omraade

	Kr.	Ø.
For Anskaffelse og Udfyldning af Skibsbemandingslisten		
— Paaførelse af ..... Mand paa Listen		
— Anskaffelse af ..... Afregningsbøger og deres Udfyldning		
— Bistand ved Affattelse af særskilt skriftlig Forhyringsoverenskomst...		
Ialt...		

De ved denne Bemandingslistes Udstedelse indgaaede Hyreaftaler er godkendt for undertegnede Mønstringsbestyrer.

Mønstret og passeret til

Mønstringskontoret i , den 19

Mønstringsbestyrer.

1. Annotations-Rulle Nr.	2. Stilling om Bord	3. Fulde Navn	4. Fødested	5. Fødselsaar og -dag	6. Rullebetegnelse. Udskrivningskreds	7. Rullebetegnelse. Lægd	8. Rullebetegnelse. Bogstav	9. Rullebetegnelse. Nr.	10. Angivelse af den Rejse eller den Tid, for hvilken den forhyrede er antaget
	~~Styrbords~~			1904					Lystenerbr
	~~Styrbords~~	Edvards P. Balsamus	Chile	25/12		Indskrevet			og retur
	~~Matros~~	August Arnoldus Schamse	Chile	1910 17/4		—	—		— —
	~~Matros~~	Juan Luis Ramos	Chile	1917 4/9		—	—		— —
	~~Lettmatros~~	Jose V. Cornejo Ayala	Chile	1923 29/11		—	—		— —
	~~Styrbords~~	Niels Ole Christensen	Kobenhavn	18/8 1919					Balbao Panama o.V.
	~~Styrbords~~	Erling Henry Olsen	Norge	15/12 1917		—	—		Panama U.S.A. o.V.
X	~~Styrbords~~ 18-46 Lucayer	Jose Marbines Cambios	Spanien	2/6 1906					Panama U.S.A.
	~~Matros~~	Erald Johan Larsen	Falkeborg	7/9 1914					Lybanmuka og Retur
	~~Lettmatros~~	Carpinteiro Pedro Jorgensen	Viborg	5/10 1927					— —
	~~Styrbords~~	Hans Viktor Franquist	Sverig	24/12 1898		—	—		— —

11. Hyrens Størrelse: for Maaneden (Kr.)	11. Hyrens Størrelse: for Rejsen (Kr.)	12. Naar Hyren er betinget med et vist Beløb for Rejsen — Hvor lang Tid Rejsen forudsættes at medtage	13. Tjenesten tiltrædes i Skibet (Dato)	14. Hyren løber fra og med (Dato)	15. De øvrige Vilkaar, paa hvilke den forhyrede er antaget	16. Vi underskrevne erkender at være forhyret i Overensstemmelse med det paa denne Liste anførte og stadfæster det med vor Underskrift	17. Anmærkninger samt Angivelse af Sted og Dato for foretagne Paa- og Afmønstringer
			12/6 1946	12/6 1946	Romandsloven Overenskomsten Arb.-og S.o.R.F.	Eduardo Pais	Paam. Valparaiso 12/6-1946 Afm. 1-9-46. Valparaiso
			12/6 1946	12/6 1946	—		Paam Valparaiso 12/6-1946 Afm. Arrived in New York 0 29/7.-46
			12/6 1946	12/6 194	—		Paam Valparaiso 12/6-1946 Afm. 1-9-46 Valparaiso
			12/6 1946	12/6 1946	—		Paam. Valparaiso 12/6-1946 Afm. 1-9-46 Valparaiso
			4/3 1946	4/3 1946	—		Paam. Valpo. 4/3-1946 Afm. New York 29/7-46
			10/7 1946	10/7 1946	—		Paam. Havana (Cuba) Afm. San Antonio 4/9-46
			9/7 46	9/7 46	—		Paam. Havana 9/7-46 Afm. New York 15/ 46
			25/7 1946	25/7 1946	—		Paam. New York. 25/7-46 Afm. 8/10-46 Havana
			25/7 1946	25/7 46	—		Paam. New York 25/7-1946 Afm. New York. 14/10-46.
			25/7 1946	25/7 1946	—		Paam. New York 25/7-1946 Afm. New York 14/10-46

Q. Now, this Defendant's Exhibit A is in Danish, is it not, Mr. Larsen, the Danish language? A. Yes.

Q. And you can read Danish, can you not? A. Yes.

Q. And opposite your name there is a line? A. Yes.

Q. With certain information on it, is there not? A. Yes.

Q. And the first word indicates your job? A. Yes.

Q. Seaman, isn't that right? A. Yes.

Q. And then comes your full name? A. Yes.

Q. And then your home town? A. Yes.

Q. Silkeburg? A. Yes.

Q. In Denmark? A. Yes.

137 Q. Then your place of birth? A. Yes.

Q. Correct? A. And the date.

Q. And th date and the year of birth? A. Yes.

Q. That is September 11, 1914, isn't it? A. Yes.

Q. Then there is a rate of pay, and then a ditto mark in this column according to tariff, is there not? A. Yes.

Q. And that tariff is the standard rate of pay agreed on between the Danish seamen's union? A. Yes.

Q. And the Skip Owners Association? A. Yes.

Q. And you are a member of that union, are you not? A. Yes.

Q. Then in the next column appears the scope of the voyage, doesn't it? A. Yes.

Q. And what does it say there? A. What?

Q. What does it say in this column that I am pointing

138 to on the scope of the voyage? A. South America.

Q. South America? A. Yes.

Q. And what else? A. And other places, South America and other places.

Q. Now, when you signed on the Randa, how long did you promise to stay on the ship? A. One journey from New York down to South America and then back to New York again.

Q. Where does it appear? Does that appear at any place? A. (No answer.)

Q. Does it appear in these articles that you were on a round trip from New York to New York? A. Yes.

Q. Where does it appear? A. You mean here (indicating)?

Q. No, where does it appear that you came back to New York? A. Havana.

Q. It says where you came from Havana does it not? A. Yes.

Q. But Mr. Larsen isn't it a fact that when you signed Defendant's Exhibit A you were bound to stay on the ship for an indefinite period of time?

Mr. Cantor: I object to that, your Honor. I consented to the admission of the articles, but we only did so for a limited purpose and that was to show the scope of his employment, and also his wages and his capacity. 140

The question of the contractual force of the articles is always one of law for the Court to decide, and the mere fact that a seaman has signed articles does not necessarily mean that he is bound by all of the terms, and I don't know what the scope or the purpose of this cross-examination is, but I think that I am constrained to make my objection at this time.

The Court: Well, you brought out from the fact that it was a round trip, and I think that it is fair for him to show that it did appear in the articles.

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Q. Isn't it a fact, Mr. Larsen, that you signed on the ship, that you were bound to serve on that ship for an indefinite period of time, but you had the right to leave, and the shipowner had the right to discharge you on seven days' notice; isn't that correct? A. Yes, sir.

Mr. Cantor: Now, your Honor, I object to the question in the form that it was asked. It asks for a legal interpretation of the contract.

As a matter of fact, the law of this country has been set forth a number of times that no seaman can be held to the terms of a voyage which is indefinite in scope.

That has been set down in a long list of cases because it is a precedent and is contrary to our public policy.

The Court: This is all something that will have to be passed on by the Court, so I don't see that it is a very serious matter, whether it goes in or not, and therefore I will allow it.

Mr. Cantor: All right, sir. Under proper admonition to the jury at the proper time, I assume, your Honor.

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Your Honor, I further object now on the ground that there has been an order entered in this case, a pre-trial order, which definitely sets forth the scope of the voyage of this vessel, and although I covered in my direct examination that particular thing, it was merely for the purpose of just leading him on to other aspects of the case.

Now, this pre-trial order says that the plaintiff signed articles in New York as an able-bodied seaman, shipped from this port to other places in South America, and——

The Court: Well, the result of your objection would be, then, that we would have to strike out all of the testimony that had any reference to the return voyage

144 to New York; isn't that true?

Mr. Cantor: That's right, your Honor.

The Court: You brought that out even though it wasn't in the stipulation.

Mr. Cantor: The stipulation says that it was to return to New York.

The Court: I don't see that it does.

Mr. Cantor: Oh, yes, it does, your Honor. The vessel eventually returned to New York.

The Court: Yes, but that doesn't deal with the scope of the voyage. She finally got there.

Mr. Estabrook: My point is, your Honor, that Mr. Cantor has chosen, for some reason of his own, to elaborate on the pre-trial order, and I am going to show on proper cross-examination that the man signed on for an indefinite period of time, and as opposed to certain people in those articles he had no right to come back to New York as a right. In fact, the fact that the ship came back is something that he might have expected.

Q. Now, Mr. Larsen, when you were hurt you were taken to a hospital in Havana, were you not? A. Yes. 146

Q. And do you know who paid the hospital bill there? A. The company did.

Q. And did you have to pay any of your expenses coming back to the United States as a passenger? A. Yes, sir.

Q. What expenses did you have to pay? A. No, I mean that was paid.

Q. That was paid by the company? A. Yes, sir.

Q. And did the company also pay your hospital bills in New York? A. Yes, sir.

Q. Now, when you fell down in the hold you hurt your left wrist and left ankle, did you not? A. Yes, sir.

Q. And you were dazed for about five minutes, were you not? A. Yes, about that.

Q. And did you complain of headaches at Havana, do you remember? A. I remember that I had very much headaches the day I come to Havana. 147

Q. Then did you have headaches when you came to New York? A. Not exactly when I come to New York.

Q. Did you make any complaints of headaches when you were hospitalized in New York? A. Not in the hospital.

Q. Did you, after you left the hospital, say that you were treated at the Long Island College Hospital? A. Yes, sir.

Q. Did you make complaints of headaches while you were treated there? A. (No response.)

Q. Did you make any complaints of headaches when you were examined by Dr. Farr? A. Yes.

Q. Did you tell him you had headaches? A. Yes, I told him that I had headaches one or two times.

Q. Have you seen any doctor on your own since you left the Long Island College Hospital in January of 1947 for your wrist, your ankle, or your head? A. No.

Q. Now, after you were discharged from the Ellis Island Memorial Hospital, is it not a fact that the company offered you free transportation to Denmark for further treatment?

149 A. No, I was not in Denmark.

Q. But did they offer to take you to Denmark? A. Oh, yes.

Q. And you refused? A. Yes.

Mr. Estabrook: No further questions.

Mr. Cantor: That's all, Mr. Larsen. Thank you.

(Witness excused.)

Mr. Cantor: At this time, your Honor, I offer in evidence the records of the United States Marine Hospital at Ellis Island.

Is there any objection to that?

Mr. Estabrook: No objection.

Mr. Cantor: Mr. Estabrook has very kindly suggested that part of the record relating to what I under-

150 stand to be a routine examination for a venereal disease be taken out of it, but it is negative anyhow, and I think that the jury realizes that it is done in cases of all seamen.

I offer this in evidence.

(Marked Plaintiff's Exhibit 2.)

Mr. Cantor: We have subpoenaed the hospital records of the Long Island College Hospital, and I believe that they are here in the courtroom.

May I have them?

(Clerk hands records to Mr. Cantor.)

Mr. Cantor: I offer in evidence the records of the Long Island College Hospital.

Mr. Estabrook: No objection.

(Marked Plaintiff's Exhibit 3.)

Mr. Cantor: Dr. Tandet, will you take the stand, please.

Dr. Nathan Tandet, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows: 152

Direct examination by Mr. Cantor.

Q. Doctor, are you duly licensed to practice medicine and surgery in the State of New York? A. I am.

Q. Do you have trouble with your hearing, doctor? A. Yes.

Q. And how long have you been so licensed? For what period of time? A. Since February, 1919.

Q. And that is twenty-two years, approximately? A. About thirty-two years.

Q. Thirty-two years. Pardon me. Doctor, have you any particular specialty that you practice? A. I specialize in X-ray work, and I do general medicine and surgery.

Q. And does that embrace orthopedic bone surgery? A. Yes. 153

Q. Did you make an examination of the plaintiff, Evald Johann Larsen on behalf of my office on or about October 12, 1951, for the purpose of evaluating his injuries and testifying, if necessary, at a later date? A. Yes.

Q. And did you make such an examination? A. Yes.

Q. Did you make a report regarding the results of your examination to my office? A. Yes.

Q. Will you tell the Court and the jury, doctor, what your examination revealed with respect to the condition of the plaintiff, Evald Johann Larsen, as of the date of your examination on October 12, 1951? A. The examination consisted of clinical findings plus the X-ray findings, and the X-ray findings showed the incompletely healed fracture of the first cuneiform bone, and decalcification within the heads of the metatarsals and within the phalanges of the foot, and the X-rays of the left wrist showed incompletely healed fracture of the navicular or scaphoid bone, and some decalcification in the distal part of the radius, and the ulna, and through the bones of the
155 hand and the wrist.

X-rays of the left ankle showed decalcification in the distal part of the tibia and the fibula.

X-rays of the skull showed an accentuation of some of the vascular markings indicating an engorgement of these blood vessels.

Clinically the examination showed, following his complaints of headaches and dizziness, post-concussion syndrome. Different size.

The Romberg was positive, and the tremor of the outstretched hands, past-pointing and finger to nose test, knee jerks diminished.

And then there was some tenderness, edema, which is swelling, a restriction of the left wrist, tenderness of the left side of the face, and tenderness and restriction in
156 the dorsal aspect of the left foot, and tenderness of the left leg.

Q. Doctor, you have referred to various medical terms which I believe would require some clarification, as much for my edification as for the edification of this jury.

As I gather it generally, there were fractures in the left wrist area; is that right? A. Yes.

Q. And also fractures in the left leg area? A. Left foot area.

Q. Left foot area? A. Yes.

Q. Now, let's take one at a time. Which particular bone or bones were fractured in the left wrist? A. (No response.)

Mr. Cantor: Could the doctor have permission to demonstrate these X-rays by means of the shadow-box, your Honor?

The Court: Yes.

The Witness (demonstrating with shadow-box): The first thing to remember is—I mean, the first lesson in X-ray that a doctor gets is what is meant by fracture, and the most important thing, a definition of a fracture means a break in the continuity of bone. 158

Now, in this X-ray here, X-ray No. 36166——

Q. Pardon me, doctor. Are these X-rays X-rays that you took of this plaintiff? A. Of this plaintiff, yes.

(Continuing) I stated that there was a fracture of the scaphoid or navicular bone.

Now, that bone is right near the wrist where the thumb is distally, that is, it is more towards the long bone.

Now, I said a break in the continuity of bone. You can see an indentation right in that navicular bone. I have an arrow pointing where the break is, and that is why I call it a fracture. A break in the continuity of the bone. That is the bone that is up here, the second row, right near the thumb, along the line of the thumb. 159

And then I also said that there was decalcification in the bones of the wrist and hand, and the distal part of the radius and ulna. The radius is this bone on the outside and the ulna is the bone on the inside.

Now, normally we all have calcium in our bones, and when there is lack of use of the part, in other words, like if it has been in a cast or a person can't use it, then the calcium fails to multiply and we get decalcification.

In the X-ray you can tell that very readily by looking at the differentiation where there is enough calcium and where there is a lack of calcium.

Now, if you will look at these bones here, they are thick with calcium, but if you will look at the end, the distal part here, it looks washed out. That thing follows right through to the knuckles of the hand and in the phalanges.

Now, that is what I meant by decalcification. It means lack of calcium. That is as far as the wrist goes, and you can see that notch.

Now, this is an X-ray of the foot, X-ray No. 36168, and in there I found that there is a fracture of the first cuneiform bone. We have seven bones in the foot that go into the tarsal bone. These are the first, second and third cuneiform bones, but this is the one that is fractured, the one near the big toe on the left foot.

Now, I said before that a definition of a fracture is a break in the continuity of the bone. Now, I read that there is a break through and through, and it is never completely healed because you can see the indentation there never filled in.

Now, when the fractures heal, the calcium lays heavy over it, sometimes even too much, but here there is none in that spot where I got the arrows, and that is a fracture, an incompletely healed fracture of the first cuneiform bone.

Then I read that there was decalcification in the phalanges and in the metatarsal bones. You can see the difference in these bones here. They are full of calcium.

But if you will look in it, so to speak, in the knuckles, you will see how washed out they are. That is because the foot was not used as much as ordinarily you would expect that a normal foot would be used.

Then I took X-rays of the skull. He complained of headaches and dizziness. And we have three views, three pictures. This is the front and these are the two lateral views.

The numbers on these are 36169, 36171 and 36170.

Now, looking at these X-rays, I read that an engorgement of the blood vessels—an accentuation—I'm sorry—of the vascular markings, is an indication of an engorgement of the blood vessels. You can't see the blood vessels, but the shadow that the blood vessels throws over the normal grooves in the skull tell us whether they are engorged or not.

Now, you will see a lot of small vessels here. That is normal. There is nothing wrong with that.

On the other hand, over here you will see how widened that is. That is an engorgement of the blood vessels. It means the shadow of the blood vessel is upon the groove 164
where it lies accentuated. You can see that.

Now, see, this is an engorgement. These little ones here is an engorgement. They are normal. But this here, these big vessels, they should be like this, thin, but here they are dilated. So that is when a person gets headaches, and so on, and he will take X-rays and you will usually find that there is an engorgement of the blood vessels or a trauma of some sort, and immediately the question is, is it a fracture or isn't it?

But you see, if the blood vessels are engorged, then you know if there is no fracture line, that that is the reason for the headaches.

Now, these different tests I did for the post-concussion syndrome, that is in a trauma of the head, we do a Romberg test, which I said was positive. We tell the patient to 165
close his eyes and if he sways, then we say that the Romberg is positive. That is an indication that there is some disturbance in the brain.

The other test we do is telling the patient to close his eyes and to touch his nose. Now, if he doesn't touch his nose but hits his fingers over there, that is past-pointing in the finger to nose test.

And then we tell him to stretch his fingers out, and if he shakes, then that is a tremor.

And then the reflexes, we tell him to cross his legs and we strike the point right below the kneecap, and we do it on both legs, and if there is a diminution, in other words, if it is lessened or it is exaggerated, we know that there is some disturbance. So when you put all these together, plus a history of trauma, plus his complaint, history of trauma, I mean injury, plus complaints of headaches and dizziness, the doctor makes a diagnosis of a post-concussion syndrome.

Q. Doctor, will you tell us your qualifications for your specialty, for the work you do? A. Well, presently I am physician for the State Department of Labor in the Handi-
167 capped Division.

I am also doctor for the State Education Department, the Bureau of Rehabilitation.

During the war I was consultant to the United States Department of Labor in the Wage and Hour Division.

I own the Modern X-ray Laboratory and for six years I used to do all the X-ray work or most of the X-ray work for the Pennsylvania, the Long Island and the Lehigh Valley Railroads, until the West Side Hospital opened up.

Q. Now, doctor, let us assume that the plaintiff in this case, my client, Evald Johann Larsen, shipped on a vessel called the SS. Randa in New York on or about July 17, 1946, and at that time he was a young man in his middle thirties in normal good health, he had never had any injury of any kind before to his left wrist or his left foot, or to
168 his head, and the occupation in which he shipped was that of an A.B. seaman, or an able-bodied seaman; that after he was on the vessel for some time and that vessel was in the port of Havana, Cuba, he met with an accident under approximately the following circumstances:

While he was standing on certain hatch boards in the after section of the No. 1 hatch, he was pushed in the stomach by the edge of the hatch board as the result of another seaman pushing his end of the board, and as the

result of being pushed he lost his balance and fell a distance of approximately 12 to 15 feet from where he was standing down to the lower hold, and that when he fell he fell all this distance on the left side of his body, striking his head, his left wrist and his left foot, and he was rendered unconscious as a result of that fall for a period of which he estimates to be about five minutes; his testimony discloses that he became conscious when he became aware of two workers helping him into a sling, and that thereafter he was carried off the vessel, taken to the Anglo-American Community Hospital at Havana, Cuba, where he was hospitalized for a period of about a month and eleven days, and that the records of that hospital, which are part of our 170
records here, show that he received a fracture or disclosed the following:

That on physical examination he had a contusion over his left side of the forehead, on the left side of his face and over the chin; he complained of pain to the left wrist and the left leg close to the ankle, both the joints were swollen and movements limited and painful; his pulse and blood pressure were normal, his heart sounds were normal, his chest examination was negative, his abdomen was not painful, and no rigidity or tenderness could be detected on palpation, neurological examination did not disclose any abnormality, and also the eye fundus examination. The first urine void examination was of a normal aspect; he was X-rayed and the results showed a fracture of the scaphoid bone of the left wrist, and the cuneiform bone 171
from the left tarsus. On account of that he had his left arm and hand put in a cast, and his left leg was also put in a walking cast, and he was using both casts on discharge, and he was discharged on November 18, 1946, to continue his treatment in the United States of America.

Now, let us assume that for a period of approximately three weeks or a month he was treated in the United States Marine Hospital at Ellis Island, from which he was dis-

172 *Dr. Nathan Tandet—For Plaintiff—Direct.*

charged after the period indicated, and thereafter he was treated for another period of about three weeks to a month at the Long Island College Hospital in their out-patient department, and that shortly after his discharge from that point or from that hospital he shipped and resumed his normal occupation, and that thereafter, on October 12, 1951, he came to your office at my suggestion and was examined by you, and you made these various tests, physical examination and clinical examination, X-ray plates, and you made the findings that you have described in detail to this Court and jury.

Now, doctor, could you state with a reasonable degree
173 of certainty whether or not such an accident, such a fall, and such a history, could be or would be a competent producing cause of the injuries which you found upon your examination? A. Yes.

Q. With a reasonable degree of certainty? A. Yes.

Q. Now, in your opinion, doctor, was such an accident, and such a fall, such a trauma, a competent producing cause of the injuries which you found and which you described? A. Yes.

Q. Now, doctor, have you formed any opinion with respect to the permanency of the injuries sustained by this man and which you found upon your examination? A. Well, I felt that he was permanently partially disabled, and as far as the wrist is concerned, I felt that he lost
174 the use of about 25 percent of the loss of the use of the wrist, and about 25 percent loss of the use of the left foot.

Q. Now, those findings, however, were consistent with the fact that he was able to continue with his normal occupation; is that right, doctor? A. Yes.

Q. Doctor, you have read the records of the United States Marine Hospital out at Ellis Island, have you not? A. Yes, sir.

Mr. Cantor: You may examine.

Cross-examination by Mr. Estabrook.

Q. Doctor, you saw Mr. Larsen only once, did you not? A. Yes.

Q. And how many X-rays did you take of him? A. Nine.

Q. And what parts of the body did you X-ray, please? A. I X-rayed—I had X-rays taken of the left foot, left ankle, skull and left wrist, including part of the hand.

Q. And did you have any X-rays taken of the right foot, or the right ankle, or the right wrist? A. No, sir.

Q. But you found, you say, a decalcification in certain of what might be called the knuckle joints both of the foot and of the hand? Is that where you found the decalcification? 176 A. Yes.

Q. And you found that evenly throughout the fingers and throughout the toes? A. Not evenly, but some. I wrote some decalcification.

Q. And that showed itself not by a change in shape but by a change in the shading, did it not, of the bone? A. Yes.

Q. Doctor, you spoke of uncompletely healed fractures of the left wrist and left foot, did you not? A. No, sir.

Q. What did you speak of? A. I spoke of one bone of the right wrist.

Q. Yes? A. That is the navicular bone, and only one bone of the left foot, the first cuneiform.

Q. You spoke of finding an uncompletely healed fracture? A. That is correct.

Q. What is your definition of a completely healed fracture? 177 A. I explained that before. Where the calcium fills in the entire area where the bone was broken or fractured.

Q. So the bone, if the fracture is completely healed, regains a symmetrical shape, does it not? A. That is correct.

Q. But if there is a small notch in the bone, then you would say that was an incompletely healed fracture, is that correct? A. That is right.

178 *Dr. Nathan Tandet—For Plaintiff—Cross—Redirect.*

Q. Even though there might be a bony union between the two pieces? A. That is correct.

Mr. Estabrook: Excuse me for just a moment, your Honor.

Q. Doctor, are you a certified Roentgenologist? A. Yes.

Q. Or a certified X-ray Roentgenologist? A. Yes, sir, I am. I am on the State Department of Labor as a Roentgenologist.

Mr. Estabrook: No further questions.

179 *Redirect examination by Mr. Cantor.*

Q. Doctor, is this the first time you ever examined for my office or testified on behalf of my office? A. Yes, sir, this is the first time.

Mr. Cantor: All right. That is all.

Thank you very much, doctor.

The Witness: Thank you.

Mr. Cantor: Oh, yes, I meant to offer these X-rays in evidence. I must ask you to leave them here, doctor.

The Witness: All right.

(Witness excused.)

Mr. Cantor: Is there any objection?

180 Mr. Estabrook: Certainly not.

Mr. Cantor: They are offered in evidence as one exhibit. I think that will be the best thing to do.

Mr. Estabrook: There are two prints of each plate.

(Marked Plaintiff's Exhibit 4 in evidence, consisting of five X-rays.)

Mr. Cantor: Your Honor, may I suggest that we adjourn at this time so that we may decide on what

other elements of proof we may wish to put in? It is very close to adjournment now.

The Court: Yes. We will adjourn now until ten minutes past two.

(Recess to 2.10 P. M.)

AFTERNOON SESSION.

Mr. Cantor: The plaintiff rests, your Honor.

Mr. Estabrook: Your Honor, at this time the defendant moves to dismiss the complaint on the ground that the 182
plaintiff had not made out a case under the Jones Act and specifically that there is no jurisdiction between the parties since the plaintiff and the defendant are both citizens of Denmark; and it appears that the plaintiff had the benefit of the benefits that were due to him under the Danish law, and that this matter occurred not within the territorial limits of the United States but on board a Danish vessel in a foreign port.

The Court: I will deny your motion, but are you sure that you have evidence in the case of the Danish law? You say that he had all the benefits under the Danish law.

Mr. Estabrook: I will have to make my motion on this ground then, your Honor, merely on the ground that he has not made out a case since he has not shown the proper 183
diversity of citizenship of the parties, and since I have put in some evidence, and then in my case I expect to offer evidence as to the Danish law and then renew the motion at the close of my case.

The Court: Yes. The motion is denied.

THE DEFENDANT'S CASE.

Mr. Estabrook: Dr. Farr.

CHARLES E. FARR, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Estabrook.

Q. Dr. Farr, are you a physician licensed to practice under the laws of the State of New York? A. I am.

Q. Will you state your qualifications, please? A. I was
185 graduated from Yale and the Yale Medical School in 1903 and took three and a half years in the New York Hospital and St. Mary's Hospital for Children as a resident and surgeon, interne and surgeon.

Since that time I have practiced in New York City, confining myself to surgery. I rose through the ranks to be attending surgeon at the New York Hospital, professor of clinical surgery in Cornell University Medical School, president of the County Society of New York, founder member of the American Board of Surgery.

I also represent Yale Medical School and its graduates on the advisory board of Yale University.

Q. Doctor, have you examined many persons for my firm and its predecessor firm? A. Yes, sir.

Q. And you have also from time to time examined seamen
186 on behalf of their own lawyers, have you not? A. I did not hear that.

Q. You have also examined from time to time seamen on behalf of their own lawyers? A. Occasionally, not very often.

Q. Doctor, did you at my request examine the plaintiff, Mr. Larsen? A. I did.

Q. And when did you perform that examination? A. February 10, 1950.

Q. Will you describe what you found on that examination? A. I obtained a history from Larsen of his being employed as an able seaman and of his fall in Havana, Cuba, about 20 feet, and the story that his left wrist and his left foot or ankle were broken, and that his left jaw was bruised or hurt; about his being in the hospital there, staying five or six weeks, and then returning as a passenger to New York to go to the Ellis Island Hospital with a cast on his leg, a cast on his wrist and arm, and that he was out of work roughly about four months.

Then I asked him as to any symptoms that he had at the time that I saw him and he told me that occasionally he had slight pain in his wrist, that is, the left wrist, like 188
rheumatism, and also in his foot. He feels this pain in bad weather.

His jaw is all right.

There was no other injury and no claim was made of permanent disability.

Q. Doctor, did you perform any neurological tests on Mr. Larsen? A. I did.

Q. What did you do? A. I tested him for the Romberg sign, which is the swaying sign with the eyes closed, and that was negative.

I tested his eye reflexes to light and accommodation; that is, looking at anything close up and looking at a distance.

I tested his knee jerks. I am not sure whether I tested 189
his ankle jerks, but I tested his muscles.

Q. Did you find any signs of neurological or cerebral injury? A. I did not.

Q. Doctor, did you arrange to have X-rays taken of Mr. Larsen? A. I did.

Q. How did you do that? A. I telephoned to Dr. Irving Schwartz and sent Larsen around the corner from my office to Dr. Schwartz's office, had the X-rays taken, and read by Dr. Schwartz, and then I saw them and read them.

Q. And is Dr. Schwartz in the courtroom now? A. He is.

Q. I hand you some X-ray plates and ask you whether those are the films you received from Dr. Schwartz pursuant to your request (handing)? A. Yes, those are they.

Q. How many of them are there, doctor? A. Seven of the wrist, four of the ankle, and five of the opposite ankle.

Mr. Estabrook: I ask to have those marked for identification at this time as one exhibit.

(Marked Defendant's Exhibit B for Identification.)

Q. With reference to the X-ray plates, did you make an examination of Larsen's wrists and feet? A. (No response.)

Q. Did you make an examination of his wrists and his feet? A. I did.

Q. And what did you find? A. I found a very slight thickening of the soft tissues of the left wrist, and I found a similar slight thickening of the soft tissues of the left foot, and a slight shrinking or atrophy of the soft tissues of the left leg.

Q. Upon examining the X-rays and from your clinical examination were you able to determine whether or not Larsen was suffering from a disability at that time? A. I was.

Q. And what disability did you find? A. I estimated that there was about 10 percent loss in strength and use of the left wrist, and about the same of the left foot.

Q. Did you find any disability as to his head? A. Not a bit; no, sir.

Q. Doctor, assuming that the report of the Havana hospital, Plaintiff's Exhibit 1, states, "Neurological examination did not disclose any abnormality, and also the eye fundus examination", and assume further, doctor, that the

Plaintiff's Exhibit 2, Ellis Island Marine Hospital records covering an admission, November 26, 1946, discharged December 10, 1946, and a second admission July 22, 1948, discharged July 29, 1948, show no indication of complaints of headaches, can you, in your opinion, state whether, in view of these records, and in view of your own findings, Larsen suffered or was suffering in 1950 from cerebral or neurological damage caused by a fall on the Steamer Randa in 1946? A. I can so state.

Q. And what is your opinion, doctor? A. My opinion is that he was not suffering from any neurological damage.

Mr. Estabrook: Now, if we could have the shadow- 194
box we will look at the X-rays.

Q. Now, doctor, would you take the X-ray plates purporting to show Larsen's wrists, and, first of all, I would like the plate showing the left wrist. A. This is a view of the left wrist. Of course, it is a shadow, an X-ray shadow of the left wrist, taken in a somewhat oblique direction.

Q. And, doctor, does the scaphoid bone appear in that X-ray? A. It does. The scaphoid bone is this—well, it is shaped somewhat like a peanut. It connects the main bone of the arm, of the forearm, with the small bones of the wrist.

Q. And does that scaphoid bone, doctor, show signs of a fracture? A. It does not. It is a normal bone.

Q. Have you got a print of the right wrist, doctor? A. 195
This is the right wrist in a similar position, and it shows the normal scaphoid bone, the right wrist.

Q. Do the X-ray films indicate a notch or indentation in the scaphoid bone? A. They do, in both. There is a normal notch in both the right and the left wrist.

Mr. Estabrook: I would now like to see Dr. Tandet's X-rays.

(Clerk hands X-ray plates to Mr. Estabrook.)

Q. I would like you to examine the prints showing Larsen's left wrist as taken by Dr. Tandet, and do you see the scaphoid bone in those prints? A. Yes, sir.

Q. Do you notice any abnormality in that bone? A. No, sir, I see no abnormality.

Q. Do you see a sign of fracture? A. No, sir, no sign of fracture.

Q. Do you see a small notch in the outside edge of that bone? A. Yes, sir.

Q. What do you consider is the significance of that notch? A. That is the normal shadow of a scaphoid bone as we regularly see it.

197 Q. Doctor, on reading that X-ray plate do you notice any signs of decalcification? A. No, sir. No, those bones are normally calcified. They have the normal amount of calcium in them.

Q. Now, some of the bones cast a whiter or firmer shadow than other bones, do they not? A. Yes, sir. It depends upon the density of the bone and the position of the bone. These bones up here might be classed as decalcified because they are partly out of focus of the X-ray machine.

Q. Doctor, referring to the X-ray prints taken by Dr. Schwartz on the right and left hand—— A. I have shown the right and the left, the oblique view, and here is the right hand, taken straight on, and straight across, the transverse view. That is the normal hand and that is the
198 normal scaphoid bone. It has got the normal notch in it, and the normal amount of calcium in the bone. That is the uninjured hand, the right hand.

Q. Do you find any different amount of calcification in the right hand than is in the left hand? A. No, sir, I do not.

Q. Doctor, referring to the X-ray prints of the feet, will you first take the X-ray print of Larsen's left foot as taken by Dr. Schwartz and— A. Here is a side-to-side view of the left or injured ankle.

Q. And does the cuneiform bone appear in that print? A. It is perfectly uniform.

Q. Where is the cuneiform bone, where does it appear there, doctor? A. Oh, I misunderstood your question.

Q. Is the cuneiform bone there? A. Yes, the cuneiform bone is right here (indicating).

Q. Do you notice any abnormality? A. There is no abnormality, a perfectly normal bone.

Q. Is there any decalcification? A. No, sir, perfectly calcified.

Q. I notice that there is some difference in the density of the bone, doctor. What is the significance of that? A. Well, they are thicker bones. Some of them are thicker 200
than others and they make a more dense shadow. They are not decalcified.

Q. And, doctor, did you arrange to have prints taken of his right foot as well? A. I did.

Q. Will you put them in the box? A. That is an oblique view of the right ankle and that is the anterior-posterior view. I want to show the transverse. This is it (indicating). This is the lateral transverse view of the right or uninjured ankle (indicating), and it shows an identical picture with the one on the left.

Q. Is there any difference in the degree of calcification—A. No, sir.

Q. —which appears there? A. No, sir, not a bit.

Q. Would you examine, please, Dr. Tandet's print of the 201
left foot? A. This I believe is Dr. Tandet's film of the left foot.

Q. Is that film turned around the wrong way, doctor? A. Well, it is immaterial.

Q. Oh, I see. And does the cuneiform bone appear in that print? A. Yes, sir, this is the cuneiform bone (indicating).

Q. And do you notice any abnormality in that bone? A. There is no abnormality whatever, no, sir.

202 *Charles E. Farr—For Defendant—Direct.*

Q. I notice, doctor, that there is a difference in the intensity of the shadow of the different bones, particularly the bones showing the outer phalanx of the toes which do not cast the same shadow. A. No, they are thicker and smaller than the other bones and the X-ray goes through and makes a deeper shadow.

Q. Is there any evidence of decalcification? A. No, sir.

Q. Now, doctor, I would like you to examine the X-ray print of Mr. Larsen's skull. A. This is a front and back view of the skull (indicating). It shows nothing abnormal. It is a perfectly normal skull.

This is a side view of the skull (indicating).

203 Q. Yes. Now, Dr. Tandet spoke of certain variations in the shadow. A. This is another side view (indicating).

Q. Do you notice some variations in the shadow of the skull? A. Yes, sir.

Q. What is the significance of those variations? A. These are the markings of the blood vessels that supply the meninges, or covering of the brain, and also supply the bones of the skull. They are perfectly normal markings.

Q. Doctor, you made a report of your examination and forwarded it to me, did you not? A. Yes, sir.

Q. Doctor, your final conclusion was that Mr. Larsen was suffering, I believe you said, 10 percent disability? A. 10 percent of his left wrist and 10 percent of his left foot.

204 Q. And you noted no disability as to his head, or brain, or nervous system? A. No, sir, none whatever.

Q. What constituted the factors that led to the 10 percent disability that you found? A. I took into account the fact that he had a severe fall; that he had been in the hospitals for quite a long period; that he had been immobilized in plaster, which causes shrinking and atrophy of muscles, and that he had been out of work for four months.

I took into account the fact that he had a slight thickening of the left wrist to the eye but none to measurement; that

he complained of slight rheumatic pain in damp and cold weather, and of the ankle there was a slight—there was a little measurable thickening of the foot, a slight shrinking or atrophy of the left leg about a half inch in each case, which is not an abnormal finding, but considering the fact that he had had this fall and had been in plaster, I allowed him 10 percent disability of the wrist and of the foot.

Mr. Estabrook: No further questions.

Cross-examination by Mr. Cantor.

Q. Doctor, will you please resume the stand? A. Yes, sir. 206

Q. Now, Dr. Farr, over a period of many, many years you have made many, many examinations in a general way, I mean, for shipowners, haven't you? A. Yes, sir.

Q. Would you say that those examinations totaled hundreds and hundreds? A. Yes, sir.

Q. And you have testified on numerous, very numerous occasions for shipowners and their agents in court with regard to those cases, haven't you, doctor? A. Not very many times. Over the years, all the years, yes.

Q. Now, doctor, I want to get something clear and I am going to go over the ground here. You have taken some X-ray plates made by Dr. Irving Schwartz and you have put them in the shadowbox, looked at them, and you told the jury that you see no evidence of fracture: is that right, doctor? A. That is what I said, yes, sir. 207

Q. Now, do you wish to suggest to this jury that this man did not fracture the bones of his left wrist? A. That is my belief. That is my firm belief from a study of the man and of the X-rays.

Q. That he never had a fracture at all? A. No, sir.

Q. And you also wish to suggest to this jury at this time that he never had a fracture of the bones of his left foot? A. Yes, sir.

Q. You say that is your honest belief at this time? A. Yes, sir.

Q. Doctor, do you recall having made a report of this examination to your lawyers? A. Yes, sir.

Q. As a matter of fact, you have just stated in response to Mr. Estabrook's question that you did send such a report? A. Yes, sir.

Q. Doctor, do you recall having said in your report as follows: "I believe, however, he has had a fracture of the scaphoid bone of the left wrist and of one or more of the cuneiform bones of the left foot"? A. Yes, sir.

Q. You did say that? A. Yes, sir.

209 Q. You said that when you made this report? A. Yes, sir.

Q. But you now say you don't believe he had a fracture? A. I do.

Q. What is that? A. I do. I say I believe he did not have a fracture.

Q. In spite of the fact that you have committed yourself in writing to your own lawyers on a previous occasion? A. Yes, sir.

Q. And this report was made in February of 1950? A. Yes, sir.

Q. And you knew the man came to you four years after the accident? A. Yes.

Q. More or less? A. Yes.

210 Q. And you would expect in that time that various acute symptoms would clear up, such as the abnormal swelling that you get with fractures, and also the very definite fracture lines in the plates? You knew that at that time, didn't you, doctor? A. They do and they don't. It all depends on the circumstances.

Q. But you had all that in front of you in February, 1950? A. Yes, sir.

Q. And you had Dr. Schwartz's X-ray plates, didn't you? A. No, I did not.

Q. Do you mean to say, doctor, that you made a report to your lawyers in a case involving fractures of bones without having in front of you X-ray reports of somebody? A. I do. I made that report on my clinical findings and I then corrected it on the X-ray findings.

Q. Did you send a subsequent report? A. No, I made a correction on—I made a statement on the X-ray report.

Q. Which X-ray report? A. The one of Dr. Schwartz, which I already okayed, or which I read and okayed.

Q. Well, what about your report, doctor? A. My report was that I thought there had been a fracture. That is from clinical findings.

Q. Have you made any other report but that? A. The 212
finding of and the okaying of Dr. Schwartz's report.

Q. Did you ever state or did you ever write a report to your lawyers and state, "I made a mistake and on the basis of further evidence which came to me I now tell you I made a mistake"? A. No, sir.

Q. You never did? A. No, sir.

Q. Didn't you know, doctor, or just a minute, I will put it this way, doctor: You are familiar with the customs of our court here, aren't you? A. Yes, sir.

Q. You have been through these cases again and again, haven't you? A. Right.

Q. And you knew that this report was going to be handed to me by the attorney for the plaintiff, didn't you? A. Well, I would expect it. I did not know it.

Q. Of course you knew that, didn't you? A. No, I did 213
not know it.

Q. You have been through this again and again and again, doctor? A. I don't know whether they give you my reports or not.

Q. You don't know that? A. No, sir.

Q. Didn't you know that your report would be handed up as part of the pretrial material in connection with this case? A. No, sir.

Q. And you never made any correction of that original report? A. I did.

Q. What is that? A. I got the X-ray report.

Q. Doctor, isn't it very, very possible for an X-ray to be taken even as little as two or three months later to show no evidence of a fracture? A. It can be so and it cannot, yes, sir.

Q. Now, let us go over the groundwork of this a little bit, doctor. A. Yes.

Q. You are an eminent bone man and when a man gets a fracture of a bone there is separation of the fragments, is that correct? A. Not necessarily, but there is a diminu-
215 tion of continuity, as we call it, a crack.

Q. There is a break somewhere, is there? A. There is a break somewhere or a crack.

Q. And sometimes there is a complete separation and other times there is not, but there is a fracture? A. Yes.

Q. And when that break occurs the natural process of human nature is to pour into that void callus material? A. Yes.

Q. And that callus material fills in all that break whether it is complete or partial, is that not correct? A. Now, I did not get that.

Mr. Cantor: Read it back to the worthy doctor.
(Question read.)

216 A. You mean the break is complete or the filling in is complete?

Q. Yes, the callus fills it in, the callus fills in the break. A. The filling in may be complete or the fracture may be complete or not, either one.

Q. But nature sends in the material into that break, does it? A. Usually, yes.

Q. Usually that is the normal process? A. Yes, sir.

Q. And that material is called callus formation, isn't it? A. Yes, sir.

Q. Now, in time that callus formation fills in that opening, doesn't it? A. Yes, sir.

Q. That callus is a cement, is that right, doctor? A. That is a good word for it.

Q. Yes. I suppose so. I am no doctor, but I am trying to use words that we will all understand.

Q. Now, that cement, after a while, is absorbed by the bone, isn't it? A. That isn't the proper expression, but that explains it.

Q. Yes. It adheres to the surrounding bones and in time it becomes bone itself, doesn't it, doctor? A. Yes.

Q. And it becomes bone so much so that later on when an X-ray is taken in many cases you would not even see 218
any evidence of a fracture? A. That is pretty speculative. I think you can always pick up some evidence.

Q. You think so? A. Oh, I think so.

Q. Isn't it a fact, doctor, that in most cases of a simple fracture of this kind that the evidence of the fracture is completely obliterated? A. It is in children.

Q. What's that? A. It is in children, but rarely in an adult where you have got a real fracture that doesn't show up for many years.

Q. Doctor, isn't it a fact that after four years' time you would expect a fracture of a kind that you found in Larsen, a young, healthy man, going to sea, to be completely obliterated with possible small— A. I would have to correct you on that. I didn't find any fracture.

Q. Wouldn't it be likely that you wouldn't find any defi- 219
nite gross signs of fracture? A. Well, we would find X-ray signs almost invariably.

Q. Almost invariably? A. Yes, sir.

Q. Now, you say that you changed your opinion once you found Dr. Schwartz's findings; is that right? A. That's right.

Q. And you also tell this jury that you made a report based upon incomplete findings; is that right? A. Well, that is a little rough, I think.

Q. You just told the jury that—you just said that you would expect to find some X-ray findings at almost any time? Didn't you just tell that to the jury? A. Yes, sir.

Q. And yet you made your report without X-ray findings, didn't you? A. I did.

Q. So therefore you made your report on the basis of incomplete factual material, didn't you? A. No, sir, I don't think that is fair.

Q. You don't think that that is fair? A. No.

Q. All right. You tell us why you don't think that that is fair. A. Because——

221 Mr. Estabrook: Well, I object to that question.

The Court: Objection overruled.

Mr. Cantor: I am merely trying a lawsuit here for a client. I don't want to be unfair to the doctor. I am asking him to tell us why it is unfair.

The Court: The objection is overruled.

A. (Continuing) I made my clinical examination and my clinical report. The X-rays don't come to me immediately. I don't see them for two or three days.

Q. What's that? A. I don't see the X-ray report for two or three days. When the X-ray report came in, I examined the X-rays. I found there were no fractures. It didn't change my opinion, the fact that he had been injured as to his wrist and foot. But I couldn't find any
222 signs of fracture.

Mr. Cantor: May I call for the original report of Dr. Schwartz?

(Clerk hands report referred to to Mr. Cantor.)

Q. Now, you say when you put down "Okay" on that, that that was tantamount, in your opinion, to a brand new report on this case? A. I don't think it is a brand new report, but it is a correction.

Q. In other words, you are telling us here today that your flat, easily understandable, unequivocal statement in your first report is to the effect that you believe that he had a fracture of the wrist, a fracture of the foot, and that was corrected by a notation on the bottom of somebody else's report saying "Okay." Is that what you are trying to tell this jury? A. That is what I am telling, and I am telling the truth.

Q. All right. I just want to get it clear.

Q. Now, when do you say you got Dr. Schwartz's report? A. I couldn't tell you without seeing it.

Q. You said before two or three days before, didn't you? A. Two or three days later, yes. 224

Q. Now, isn't it a fact that Dr. Schwartz's report bears the very same date that your report bears? A. He got the case and probably or possibly made his report. I don't know. I don't get it, you see.

Q. He made his reply, as a matter of evidence, and I will ask you to look at it and tell us the date on Dr. Schwartz's report (handing)? A. February 10, the same date that I made my examination.

Q. That's right. And what is the date of your report? A. February 10th.

Q. That's right. So you made your report on the same day that he made his report? A. The same day that he made the examination, yes.

Q. Yes. And the same day that he made his report? A. That doesn't mean that I saw this on February 10th. 225

Q. In other words, you predated your report? A. I didn't predate my report.

Q. Now listen, doctor— A. I made my report on February 10th, the day of my examination. I gave my clinical findings the day of my examination. When I got the X-ray report, in a day or two, and I can't tell you exactly when, then I corrected it.

Q. He made an examination of this man the very same day that you did, didn't he? A. It says so, and I believe it.

Q. And without looking at his X-ray report you made your report? A. I did, yes.

Q. Doctor, you have done a lot of discussing here about the fact that there was no decalcification in this man's bones that you could see, and this man had some decalcification in his bones about a month or so after the X-rays, after the accident, and if that was so, would that decalcification be likely to pass away over a period of years or would it remain? A. It would pass away if he used his foot and his wrist.

227 Q. But, on the other hand, was there a strong likelihood that it might remain? A. No, not if he used his wrist and his foot.

Q. Are you aware of the fact that there is some evidence in this case, not of the doctor, not of Dr. Tandet's, but of a completely disinterested agency, that there was decalcification of this man's bones of the wrist and of the foot about a month after the accident happened? A. I believe I read that in the hospital record.

Q. May I read these reports to you, doctor:

(Reading) The left foot shows a moderate decalcification—and that is exactly the term that Dr. Tandet uses. He said "some decalcification." Is that right? A. (No response.)

Q. And this says that there was moderate decalcification
228 of all the bones of the left foot probably due to disuse atrophy; you read that, you say? A. Yes, sir.

Q. Would you disagree with their findings? A. I couldn't. I don't know what was present at that time. I didn't see him at that time.

Q. Do you also read the report saying, "Left arm shows slight calcification of all the bones of the wrist," but they meant decalcification, didn't they? A. I read that, I think, yes, sir.

Q. Probably due to disuse atrophy? A. Yes, sir.

Q. So they found decalcification of the wrist and they found decalcification of the foot? A. Yes, sir. They always find it when they are put in casts.

Q. You say these X-rays taken at this later date don't show it? A. That is true; yes, sir.

Q. Are you also familiar with the report made in this case by the Anglo-American Community Hospital in Havana, Cuba? A. I have read it; yes, sir.

Q. Do you know the reputation of that hospital? A. No, I know nothing about it.

Q. You know X-rays were taken there, don't you? A. I believe it is in the report; yes, sir. 230

Q. And you know that they stated unequivocally that the man had fractures of the wrist and fractures of the foot? A. I believe they did; yes, sir.

Q. And you know that they completely covered his left arm from his fingers to his elbow and his foot from his toes to his knees; is that right? A. Yes, sir.

Q. That is the treatment for a fracture, isn't it? A. Yes, sir.

Q. And the purpose of it is to promote the formation of this callus material that I was talking about? A. It is to prevent displacement.

Q. Now, doctor, you are suggesting that this hospital was completely wrong in its diagnosis of fracture of both these members? A. I think they were wrong; yes, sir.

Q. You think they were wrong? A. Yes, sir. 231

Q. That they slapped these casts on his foot for no reason at all? A. I wouldn't say that. The man came in, and he obviously had been injured, and he had a swollen foot, and he had a swollen wrist, and their X-rays, they thought, showed a fracture, and they put the casts on him. It is a very common mistake.

Q. I see. A very common mistake. And this man received further treatment in the Marine Hospital for about

a month also under the same mistaken misapprehension, didn't he? A. I don't think they made that same mistake, sir.

Q. Now, the man received a four months' disability as the result of these injuries; is that right? A. So he told me, and I believe it.

Q. Well, you know, the record shows about four months? A. (No response.)

Q. Do you mean to tell us that this four-months' disability was caused by just some kind of a surface contusion or blow and not a fracture of the bones? A. I don't say that.

233 Q. What do you say? A. I say that he had an injury, and I can't say what. Probably it was a sprain. Then he was put in plaster and kept quiet, and he couldn't use it.

Now, if you take any one of us and put us in plaster, and keep us there for four or six weeks, we would have some bone atrophy or decalcification.

Q. Did he have a sprain? A. Yes.

Q. Of what? A. Of the wrist.

Q. A sprain of the foot, too? A. Yes, sir.

Q. And sprains of both of them? A. Yes, sir.

Q. Fractures in neither one of them? A. I didn't hear that.

Q. He didn't have fracture in either one, did he? A. Not to my knowledge; no, sir.

234 Mr. Cantor: All right. That's all.

Redirect examination by Mr. Estabrook.

Q. Doctor, did you read the clinical record or the radiographic report dated November 27, 1946 of the left foot from the plaintiff's Exhibit 2? A. I believe I did.

Q. Do you recall this phrase: "No distinct fracture line observed in any of bones. If there was a fracture it healed

completely so that it can no longer be identified"? A. I read that; yes, sir.

Q. And did you consider that in stating your opinion that there was no fracture? A. I did.

Q. Now, doctor, would the moderate decalcification on November 27th, approximately seven weeks after the injury, be expected from having the left foot placed in a plaster cast? A. Yes, sir.

Q. And in your opinion is that decalcification a permanent condition? A. No, sir.

Q. How long is it to be expected, in your opinion? A. It varies a great deal depending upon whether the man can and does use his extremities. 236

Q. In any event, did you find any moderate decalcification on examining the X-rays taken in 1950? A. I did not.

Q. And was your examination of the X-rays of the right foot as well as the left of assistance to you? A. It was. It gave me a comparison between the two sides.

Q. Now, doctor, did you see a clinical record, radiographic report, of the United States Public Health Service, Plaintiff's Exhibit 2, dated December 2, 1946, covering an X-ray of the left arm? A. I did.

Q. And here, as in the X-ray of the left foot, the clinical impression was an old fracture; do you recall that? A. Yes, sir.

Q. Do you recall the X-ray findings? A. I believe the X-ray findings were negative for fracture.

Q. I call your attention to the statement, "The scaphoid 237 shows a double dense linear shadow in the middle of the waist probably due to rings, but no distinct fracture line observed." Do you recall that? A. Yes, sir.

Q. And did you consider that statement by the American Hospital, the Government roentgenologist, in reaching your conclusion that there was no fracture? A. I did.

Q. Now, doctor, do you recall also this report by the impartial Government roentgenologist: "Left arm shows

slight calcification. All the bones of the wrist probably due to disuse atrophy"? A. I remember that, yes, sir.

Q. Was that, in your opinion, a normal result to be expected from having the arm placed in a cast? A. I think they mean decalcification, and then it is the normal thing.

Q. Yes. And is that a permanent condition, in your opinion? A. No, sir.

Q. In any event, did that condition exist in 1950? A. Could it exist?

Q. No, did it. A. No, sir.

Q. And do you base that opinion on the X-rays taken by Dr. Schwartz? A. I do.

239 Q. In both the right and the left arm? A. Yes, sir.

Mr. Estabrook: No further questions.

Mr. Cantor: At this time, your Honor, I offer in evidence the report to Messrs. Haight, Deming, Gardner, Poor & Havens, the attorneys for this defendant, dated February 10, 1950, purporting to be signed by one Charles E. Farr.

Mr. Estabrook: No objection.

(Marked Plaintiff's Exhibit 5.)

Mr. Cantor: No further cross-examination.

Mr. Estabrook: No further questions.

(Witness excused.)

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IRVING SCHWARTZ, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Estabrook.

Q. Dr. Schwartz, are you a physician duly licensed to practice under the laws of the State of New York? A. Yes.

Q. What are your qualifications, doctor? A. I am a roentgenologist, X-ray physician, certified by the American Board of Radiology and diagnostic X-ray. At present I am an instructor in roentgenology at Cornell University Medical School, and assistant professor of clinical roentgenology at the New York University Medical School. I 242
am director of roentgenology at the Knickerbocker Hospital and at the Willard Parker Hospital.

I am assistant roentgenologist at the New York Hospital and at the University Hospital.

I am associate roentgenologist at St. Vincent's Hospital.

Q. Did you make an X-ray examination of Mr. Evald Larsen at the request of my firm? A. Yes.

Q. And we requested that through Dr. Farr, did we not? A. That is right.

Q. And you sent a report to Dr. Farr to be forwarded to us? A. Right.

Q. I ask you to examine Defendant's Exhibit B for Identification, and see if those consist of X-ray plates made by you in the course of your X-ray examination of Mr. Larsen? A. Yes, these are the X-rays. 243

Mr. Estabrook: I offer Defendant's Exhibit B for Identification in evidence.

Mr. Cantor: No objection, your Honor.

(Defendant's Exhibit B for Identification received in evidence.)

Q. Now, Dr. Schwartz, starting with the left wrist, will you examine the X-ray plates you made of Mr. Larsen's left wrist by putting it in the shadowbox, please. A. (Witness does as requested.)

Q. Does the scaphoid bone appear in those prints? A. Yes.

Q. Will you point it out to the jury, please? A. It shows to best advantage in this radiograph. This is the scaphoid bone (indicating).

Q. Do you notice any abnormality of the bone? A. No.

Q. Is there a notch in the bone? A. Yes, there is a notch in the bone. Yes, the word "notch" would be a correct
245 description of this contour of this irregularity in the contour.

Q. In your opinion, doctor, is that notch evidence of a completely healed fracture? A. No. That is a normal part of the bone.

Q. Now, would you also, doctor, place on the screen so that the jury can see it, a print of the right wrist? A. There is a corresponding projection on the right side. I will put it in closer proximity to it, and there is a similar notch on the right side there (indicating). Would you want me to pass this to the jurors? I think they can see it better. It is a small irregularity and I think they can see it if they will hold it against the light. I think that is what the doctor was talking about before.

Q. Now, doctor, before you pass those to the jury, are
246 you able to tell me what degree of decalcification is shown? A. Yes. The decalcification of these bones is normal.

Q. And what is the difference in intensity of the shadow due to, doctor? A. The difference in intensity is due to the different structure of the different bones and of the different parts of the same bone.

Q. Doctor, referring to Dr. Tandet's plate of the left wrist, that is, Plaintiff's Exhibit 4— A. I don't have that here.

Mr. Estabrook: Will you let me have Dr. Tandet's X-ray plates.

Mr. Cantor: Yes (handing).

Q. Do you observe the cuneiform bone? A. No, this is the wrist. The cuneiform bone is in the foot.

Q. The scaphoid bone, that is right? A. Yes, this is the scaphoid bone.

Q. And you said it was shaped somewhat like a peanut did you? A. I did not think of any beautiful figures like that but I think peanut is a good description.

Q. But it is a small irregular shaped bone, is it not? A. Yes, and this gives you a pretty good idea of what it looks like. 248

Q. Do you see any evidence of fracture there? A. I do not.

Q. Do you see a notch? A. Yes, there is an arrow inked in, pointing out this notch. It also appears in the radiograph that I made of the left wrist, and also in the radiograph I made of the right wrist.

Q. Very well. Do you see any evidence of decalcification? A. No.

Q. In those pictures? A. No. I see no evidence of decalcification.

Q. Doctor, did you in preparing your report and your opinion consider other reports, or did you give a report and give your opinion on the prints you made in 1950? A. No; at the time I made my report I had no other information 249 about other X-rays. I did this morning before lunch see some reports that had previously been made.

Q. But your report as of February 10, 1950, was based on your own observations and nothing else? A. Yes, based on the study of the X-rays that I made.

Q. Doctor, when you made a report, or when you made your report dated February 10, 1950, is that the date you mailed the report? A. I have no recollection of when I

250 *Irving Schwartz—For Defendant—Direct.*

mailed the report but the date on the report also corresponds to the date on which the X-rays were made. Sometimes I defer making the report and sometimes when I do make the report there is some delay in mailing, but I have no precise recollection of what happened in this instance.

Q. Doctor, would you look at the prints of the left foot, please, first your prints.

The Clerk: You mean Exhibit 4, Plaintiff's Exhibit 4?

Mr. Estabrook: No. Defendant's Exhibit B.

251 A. Here is a radiograph of the left foot and here is a second radiograph of the left foot.

Q. Now, does the cuneiform bone appear? There are three cuneiform bones, and I was thinking of the cuneiform bone at the base of the big toe. A. Sir?

Q. The cuneiform bone appears there, the cuneiform bone at the base of the big toe. A. Well, let us call this the first cuneiform bone, and we see that here, and we see it again here (indicating).

Q. Now, does that print indicate any significance or any abnormality at all in the bone? A. I see no abnormality.

Q. Do you see any notch in the bone? A. Well, of course, these bones are extremely irregular and you see evidences of the irregularity in outline here. That is the form of
252 them.

Q. And you have a print of the right foot? A. Yes, and I will place those here as they were in corresponding projection.

Q. Yes. A. Side to side.

Q. Well, one is to the left, one to the right and one is the other way around, is that right? A. Well, just as we see here.

Q. Yes. A. The great toes are near each other.

Q. The great toes are in the middle? A. That is right.

Q. Well, isn't there a notch on the right foot of the first cuneiform bone? A. You mean this indentation here (indicating)?

Q. That is the left, isn't it? A. No, this is the right. Would you like it to go the other way? What is your question now, please?

Q. The right foot is to the right? A. Yes.

Q. Now I say there is a notch which appears to be on the right foot as well as the left foot? A. There is an indentation in this aspect of the bone here (indicating).

Q. Yes. A. And it is similar to the indentation here 254
(indicating).

Q. Does that indentation in your opinion indicate a completely healed fracture? A. No, that is the normal contour of that bone.

Q. And looking at those two prints, doctor, do you see any sign of decalcification of the left foot? A. No.

Q. Doctor, you also took radiographs of the ankle, did you not? A. Yes, I did.

Q. And they were negative, were they? A. Yes.

Q. I will ask you, doctor, to examine Dr. Tandet's prints of the left foot, please. A. This is the radiograph of the foot.

Q. And I believe on the left you see an indentation of the first cuneiform bone? A. Yes. He shows only the left here. 255

Q. Yes. A. Both of these are different projections of the left.

Q. But the print to my left, on that print that indentation appears? A. Oh, yes.

Q. And do you consider that indentation, that aspect, to be a sign of a completely healed fracture? A. No, I do not.

Q. Doctor, do you see any sign of decalcification? A. No.

Q. To what do you attribute the lighter shadow of the toes? A. It is normal.

Q. Yes, doctor? A. There is less calcium there than in these other bones. The quantity is different.

Q. Is that an abnormal condition, doctor? A. No, that is normal.

Q. Now, doctor, will you examine the plates of the skull taken by Dr. Tandet? A. Yes.

Q. By the way, doctor, was any request made of you to take X-rays of the skull? A. No.

Q. Doctor, what do those plates show? A. To me they show no abnormality. I see no abnormality in these radio-

257 graphs.

Q. Do you see some evidence of blood vessels in those plates? A. Yes, they are what is known as vascular markings.

Q. But do those vascular markings have any significance? A. Yes. They show where the blood vessels are.

Q. Are they large or small, or are they abnormal? A. Well, there is a considerable range—a considerable normal range of the diameter of these markings, and those markings that we see here are well within that normal range.

Q. Doctor, on the basis of your examination of February 10, 1950, did you see any sign of previous fracture of the scaphoid bone of the left wrist, or the cuneiform bone of the left foot? A. No, I see no such evidence.

258 Mr. Estabrook: Your witness.

Cross-examination by Mr. Cantor.

Q. I suggest you resume your seat, doctor? A. Yes.

Q. Doctor, you were in court yesterday, weren't you? A. I was in the corridor.

Q. Yes. When did you get here? A. Sir?

Q. What time of the day did you get here? A. I guess about ten-forty.

Q. Ten what? A. Ten-forty.

Q. In the morning? A. That is right.

Q. How many hours did you stay here? A. Oh, I think less than an hour, I think.

Q. And did you come back again in the afternoon? A. No.

Q. You were here in the morning, weren't you? A. Yes, I was.

Q. The first thing in the morning? A. No, about ten-thirty or ten-forty, something like that.

Q. You have been here all through the course of this trial, haven't you, doctor? A. Well, I arrived here I guess about 11:15 and I have been here continuously. 260

Q. You heard all of Dr. Farr's testimony? A. Oh, yes, I did.

Q. Now, doctor, have you any idea of——

Mr. Cantor: I withdraw that.

Q. I show you here a copy of the report that you are alleged to have made. Will you look at it (handing)? A. Yes, sir.

Q. That is your report, isn't it, doctor? A. That is right.

Q. And the report is addressed to whom? A. Dr. Farr.

Q. To Dr. Farr? A. Yes.

Q. Now, I want you to turn it sideways. A. Sideways?

Q. Yes, sideways. A. Yes.

Q. Do you notice the stamp on it? A. Yes. 261

Q. Now, what does that stamp say? A. "Received February 14, 9 A. M."

Q. By whom? A. 1950.

Q. By whom? What else? A. To Haight, Deming, Gardner, Poor and Havens.

Q. Do you have any idea how that got into Haight, Deming's hands? A. Yes, I think we mailed that copy from our office.

Q. Who is "we"? A. I think my secretary mailed it.

Q. Where is the original of the report?

Mr. Cantor: Where is the original of the doctor's report?

Mr. Estabrook: Here (handing to Mr. Cantor).

Q. Will you take a look at your original report, doctor (handing to witness)? A. Yes.

Q. Is there any such stamp in that? A. No.

Q. Now, you think your office mailed that to Haight, Deming? A. Yes, that is the usual procedure.

Q. But you have no recollection of that, have you? A. 263 Oh, no.

Q. But these reports were addressed to Dr. Farr— A. That is right.

Q. —weren't they? A. Yes.

Q. You were not retained by Haight, Deming in this matter, were you, to make these X-ray examinations? A. Well, I don't know how to accurately express my relationship. Dr. Farr saw this patient. I knew that the patient had been referred to him by some other agency, and I made the X-ray examination according to the directions.

Q. At his request, didn't you? A. Yes, sir.

Q. And you sent your report to him, didn't you? A. I sent a copy to Dr.—I sent a report to Dr. Farr and a copy to Haight, Deming, et cetera.

264 Q. You have no recollection of having sent a copy to Haight, Deming? A. I have no recollection in this particular case, but that is our routine procedure with cases that come from Haight, Deming's office.

Mr. Cantor: Now, at this time I wish to offer an additional exhibit, the original report made by Dr. Farr.

The one I offered before, your Honor, was a copy which was furnished to us and this is the original.

Is there any objection?

Mr. Estabrook: No.

(Marked Plaintiff's Exhibit 6.)

Mr. Cantor: That is all, doctor, No further cross-examination.

(Witness excused.)

The Court: We will take a short recess.

Mr. Cantor: May I have one minute to read something from this?

The Court: Certainly.

Mr. Cantor: Now, ladies and gentlemen of the jury, may I read this with the Court's permission, your Honor? 266

The Court: Yes.

Mr. Cantor: This is the original report made by Dr. Farr and this report is addressed to Haight, Deming, Gardner, Poor & Havens.

This report bears a stamp on the side received Haight, Griffin, Deming & Gardner, 1950, February 15, A. M. 9.04.

And I have also offered in evidence a report signed by Dr. Schwartz addressed to Dr. Farr which shows that a copy of this was received on February 14, 1950.

The Court: We will take a short recess.

(Short recess.)

Mr. Estabrook: At this time I offer a stipulation dated November 15, 1951 with regard to the Danish law, so ordered November 26, 1951. 267

Mr. Cantor: No objection, your Honor.

The Court: Received in evidence.

(Marked Defendant's Exhibit C.)

(The following proceedings were had in the absence of the jury.)

Mr. Estabrook: Your Honor, at this time I would like to place first a stipulation on the record that Larsen was paid, in addition to his earned wages, the sum of $20.70 representing seven days' wages in accordance with the articles and the Danish law.

Mr. Cantor: I object to the phrase "in accordance with the articles and the Danish law."

I will stipulate to the fact that he received that sum of money.

Mr. Estabrook: And that he also received——

269 The Court: Strike out "in accordance with the articles and the Danish law"; is that what you want?

Mr. Cantor: That's right, your Honor.

Mr. Estabrook: —and that he also received the sum of $79.80 as maintenance and subsistence from December 10, 1946, the date he was discharged from Ellis Island, from the hospital there, until December 30, 1946, at the rate of $3.80 per day, making it $79.80 his maintenance, for a total of $100.50.

Mr. Cantor: We so stipulate. We will concede that this is Mr. Larsen's signature.

The Court: The total is $100.50?

Mr. Estabrook: Yes, your Honor.

On Mr. Cantor's concession, this paper that I have in my
270 left hand bears Mr. Larsen's signature, and on that concession I offer this paper in evidence as a receipt for $20.70.

Mr. Cantor: Now, I object to the admission of that paper in evidence because we have already conceded that he received $20.70, and therefore it is unnecessary, and for the reason that it contains, after translation by a gentleman in the rear of the courtroom, some statements about having been made in accordance with Danish law, and that, to me, sounds very much like a concession as to certain vital points

in this case, and I therefore object to its admission as being——

The Court: If he made the concession as to the vital points in the case, oughtn't it go into evidence?

Mr. Cantor: You mean if he signed it?

The Court: Yes.

Mr. Cantor: But on a question of law I don't think he should be bound by something of that nature.

The Court: That might be, but that would be a matter for you to bring out if you wanted to?

Mr. Cantor: Well, I have made my objection giving my general reasons.

The Court: The objection is overruled. 272

(Marked Defendant's Exhibit D.)

Defendant's Exhibit D.

Undertegnede Matros, Evald Johan Larsen, der den 8. Oktober 1946 blev afmønstret fra S/S "Randa" paa Grund af et Ulykkestilfaelde, anerkender herved fra Rederiet J. Lauritzen at have modtaget $20.70, udgørende den mig i Henhold til Sømandslovens Par. 32 tilkommende Hyre for 7 Dage efter Fratraedelsen.

New York, den 14. Januar 1947.

E. J. LARSEN 273

The Court: May I ask whether the stipulation with respect to the payments is intended to change the stipulation in the pre-trial order? Did you have that in mind?

Mr. Estabrook: Yes, it is. The pre-trial order figure is incorrect, unfortunately. The figure is incorrect.

I would now like to call Captain Lynner as a witness to translate this document.

The Court: It isn't anything that you care to submit to the jury, is it?

Mr. Estabrook: No.

The Court: It is purely for legal purposes?

Mr. Estabrook: That's right, sir.

SIGURD J. LYNNER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Estabrook.

275 Q. Captain Lynner, are you familiar with the Danish language? A. Yes.

Q. I ask you to translate from Danish into English Defendant's Exhibit B. A. (Reading) The undersigned a.b. Evald Johann Larsen, who, on October 8, 1946, was paid off from the SS. Randa on account of an accident agrees that he has received from the owners of the ship J. Lauritzen $20.70, which is due to me according with Maritime law, paragraph 32, that is, wages for seven days from the time I was paid off.

Dated New York, January 14, 1947.

Signed E. J. Larsen.

276 Mr. Estabrook: Now, I am ready to proceed with the jury, your Honor.

(The following proceedings took place in the presence of the jury.)

Q. Captain Lynner, what is your present business and occupation? A. Marine and cargo surveyor.

Q. Captain, have you been a licensed Merchant Marine officer? A. Yes. I have been going to sea for 22 years. I have been surveying for 35 years.

Q. And where did you sail, in the engine room or on deck? A. Deck master.

Q. And you still have a license? A. Yes.

Q. In the American Merchant Marine? A. No, in the Norwegian, a master's license.

Q. Captain Lynner, you heard Mr. Larsen testify as to the replacing of the hatch boards in the No. 1 hatch on the Randa, did you not? A. Yes.

Q. You heard him describe how, when a hatch is covered, first steel beams such as strongbacks are placed in the open 278
hatch? A. Yes.

Q. And these steel beams run across the ship, do they not? A. That's right.

Q. Now, when the steel beams are in place, then hatch boards are put in position from the edges of the hatch out to the beams? A. That's right.

Q. And did you hear Mr. Larsen describe how they started to close No. 1 hatch by covering the port or the lefthand after corner and putting in three boards while standing around the hatch and pushing them into position? A. Yes.

Q. And then did you hear him describe how he and his fellow seaman placed the three other boards up on the hatch, and then he got up on the hatch and picked up 279
the forward end of the boards, one board, and walked sideways over, laying that board in position? A. That's right.

Q. And did you hear him describe how he was holding the board up in front of himself and walking sideways with his fellow seaman holding the other end? A. Yes.

Q. Can you state in your opinion whether that was a proper way to do that work? A. He should have had the board.

Q. Please answer this question yes or no. Is that the proper way to do it? A. No.

Q. What is the proper way to do it, in your opinion? A. He should have the hatch board in front of him walking in towards the middle of the hatch. These hatch boards are two and a half inches thick; they are made by planks, each bolted together, two together, and then the length of which makes them anywheres from 20 to 24 inches wide.

The length of the board depends upon the sections and the length of the hatch, but they are always either 20 inches or 24 inches wide, and always two and a half inches thick.

Q. Do you consider it was proper for him to have stood
281 with his back to the open hatch holding the board up in front of him? A. No. He should have walked athwartships from—that is, from the forward part of the hatch covers that already had been laid down, and he should have walked athwartships, that is, crossways, across the hatch, to where he was going to put the other cover down, and, of course, the hatch is about three feet high, so he would be standing, working on the platform, three feet higher than the man who was on the deck having ahold of the other end of the hatch cover.

Mr. Estabrook: No further questions.

Cross-examination by Mr. Cantor.

282 Q. Captain, what is your business now? A. Marine surveyor.

Q. And you say you have been doing that for 35 years? A. That's right, since 1916.

Q. And is that the only thing that you have been doing for the last 35 years? A. Yes.

Q. You haven't been sailing ships during that 35 years? A. No, but I am on board ships every day, three or four of them.

Q. So that your experience in the handling of ships goes back to 35 years? A. No. I am handling ships, giving advice, and acting as a consultant every day from 9 o'clock in the morning to 5 o'clock at night.

Q. What kind of advice and consulation do you give? A. About the stowage of cargo, about the handling of cargo, about the rigging of ships, about the extent of damages, and about the cost of damages.

Q. Now Captain, these hatch boards, how wide are they? A. They are usually made either from two 10-inch planks or from two 12-inch planks, each bolted together.

Q. They are from 20 to 25 inches wide? A. No, they are from 20 to 24 inches wide. They are never 25 inches unless 284
you put three together and then——

Q. You indicate with your hands, Captain, how wide 20 inches is. A. This is about 24 inches (indicating).

Q. That is 24 inches? A. Yes; and that is about 20 (indicating).

Q. A little wider than that? A. If you will get a measure you will find that it is right.

Q. How thick do you say that board was? A. Two and a half inches thick.

Q. How wide is two and a half inches? A. That is about two and a half inches (indicating).

Q. How long are these hatch boards? A. Depending upon the section and the length of the hatches. You have got hatches anywhere from 20 to 35 feet.

Q. All right. Take an average board, then, and that 285
would be, let's say, 27 feet long and 22 inches wide? A. What do you mean, a hatch 27 feet long? You don't mean that.

Q. How long is a board? Oh, I made a mistake. A. Well, if you have——

Q. About nine feet; is that right? A. If you have, a plank, for instance, 24 feet long, and you have three sections, then the length of the cover will be about eight feet or a

little less, because you have got to make some allowance in order that you can get the covers inlaid on the king beams.

Q. All right, Captain. We understand that. Now, you take a board eight feet long, approximately 22 feet wide, two and a half inches thick; how much would that weigh? A. 22 feet wide?

Q. No. 22 inches wide? A. (No response.)

Q. Did I say 22 feet? A. Yes.

Q. 22 inches. A. I should think that board would weigh somewhere around 35 pounds.

Q. Now, you say that the way to do it is for these men to grasp the edge of this board, the long edge of the board,
287 and walk forward with it? A. No. You have got handles on each side, on each end of each cover, and you have got a staple, a bar on the opposite end—for instance, this is the hatch board. Then you have got a staple here on this side, and you have got another staple here on the other side to get a hold of that board.

Q. Do all hatch boards have staples? A. Practically all of them.

Q. Do you know whether this ship had staples? A. No, I don't.

Q. Would that make a difference in your answer? A. No. You would have to carry it.

Another thing, you don't carry those boards. You slide them, more or less. If you have got a long distance to go, you carry them, but if you have just 24 inches to put it
288 over, you just push it over.

Q. What objection would there be to carrying it, captain? A. Well, it is more work. The other way it is easier and it is safer.

Q. It is easier? A. Yes.

Mr. Canton: No further cross-examination.

Mr. Estabrook: No further questions.

(Witness excused.)

Mr. Estabrook: At this time, your Honor, the defendant rests and moves to dismiss the complaint on the grounds that the Court has no jurisdiction, and that the applicable law, the Danish law, according to that law Larsen received those benefits to which he was entitled, and that no further benefits are properly due him in a Court of law, but rather through the Danish Compensation Board.

The Court: Motion denied.

Mr. Cantor: No rebuttal, your Honor. The plaintiff rests.

The Court: Are you ready to sum up now?

Mr. Cantor: I don't quite understand you, your Honor?

The Court: Are you gentlemen ready to sum up now? 290

Mr. Cantor: If you wish us to, your Honor. If you want us to go over to tomorrow, that is all right with me.

The Court: Well, I think it would be unfair to have one summing up without the other summing up at the same time.

Do you think that you can finish up in 20 minutes? Can you do it in 10 minutes apiece and then I will charge the jury in the morning?

I would like to adjourn today at the usual hour, which is half past four.

Mr. Cantor: I think that ordinarily I am a long summer upper, but I think that I can do it in 10 minutes, your Honor.

Mr. Estabrook: Well, if Mr. Cantor can do it in 10 minutes, so can I.

The Court: All right, proceed, gentlemen. 291

(Mr. Estabrook summed up to the jury on behalf of the defendant.)

(Mr. Cantor summed up to the jury on behalf of the plaintiff.)

The Court: Ladies and gentlemen of the jury, I want to caution you against discussing this case overnight among yourselves and particularly not with anybody else.

292 *Motion to Dismiss.*

You will please be here at half past ten in the morning when I shall deliver my charge.

(At this point the jury left the courtroom and the following proceedings took place in the absence of the jury:)

The Court: Have you gentlemen seen each other's requests to charge, or have they been exchanged?

Mr. Cantor: No, sir.

Mr. Estabrook: No, sir.

The Court: Do you want to run over them now to see if either one has any objections to the other's?

Mr. Cantor: Do you wish us to exchange requests at this time, your Honor?

293 The Court: Well, I want each one of you to look at the other's requests so that you can tell me whether you have any objections.

Mr. Cantor: That is what I had in mind. Here is an extra copy for you (handing to Mr. Estabrook).

Plaintiff's Requests to Charge.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

294

1st. The relationship between the plaintiff and the defendant was of such a character that they were governed by the provisions of the Jones Act.

2. The defendant was under the obligation to furnish plaintiff with competent fellow crew members.

3. That the negligence of any crew member is the negligence of the defendant.

4. Should the jury find that the plaintiff sustained his injuries as a result of the negligence of the fellow crew member with whom he was working, then the jury must find for the plaintiff on the first cause of action.

5. Should the jury find that the plaintiff performed some act, or failed to perform some act, which contributed to the accident, such finding would not completely bar the plaintiff's right of recovery on the first cause of action. The jury, in such case, should apportion the degree of blame attributable to the plaintiff and the defendant, and deduct from the total damages assessed the percentage of negligence attributable to the defendant, and award a verdict to the plaintiff for the balance. 296

6. The Jones Act provides that assumption of risk is no defense to this type of action. In other words, the fact that plaintiff worked under conditions which involved a risk does not mean that he assumed the consequences of the risk.

7. Plaintiff is not required to prove his case beyond any reasonable doubt under the evidence. If the jury finds that the preponderance of the evidence supports the plaintiff's side of the case on the issues he is to prove, plaintiff is entitled to recover.

8. It is not necessary for the plaintiff to have exercised the best possible judgment in order to be determined free from contributory negligence. His conduct is to be measured only by what was reasonable under the particular circumstances. 297

9. In the event you find that plaintiff is entitled to recover, his recovery should include such a sum as will adequately compensate him for his pain, suffering, loss of earnings, diminution of his earning powers and for the perma-

nence of his injuries. In determining his loss of earnings, you should compute the amount you believe he lost by reason of injury. You should compensate him for wages he lost during said period which he otherwise would have received. In determining the amount plaintiff is entitled to recover for pain and suffering, you should take into consideration the pain he has suffered in the past and the pain he is likely to suffer in the future.

Your award will be the complete and final award for all loss of earnings, pain, suffering and permanence of injuries suffered by the plaintiff in the past, as well as the complete and final award for all such loss of earnings,
299 pain, suffering, and permanence of injuries that you believe he will suffer in the future.

10. Plaintiff is entitled to an award for maintenance and cure on the second cause of actio.. regardless of the issues of negligence, as long as he was injured aboard the vessel and same was not caused by his own wilful fault or vice. Such award for maintenance and cure should be at a reasonable rate per diem for the number of days he was unable to work as a result of the injuries he sustained and during which time he was either taking out-patient treatment or convalescing.

Prospective Requests to Charge.

300

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

1. Plaintiff is making no claim that his earning capacity has been impaired (pre-trial order, paragraph 6(2)).

2. Plaintiff is making no claim for medical expenses (pre-trial order, paragraph 6(5)).

3. If American law applies, defendant is entitled to a credit as to the second cause of action for all moneys advanced plaintiff for his board and lodging.

4. If American law applies, defendant is not an absolute insurer (*Larsson* v. *United States of America*, 1950 A. M. C. 176, affirmed 1950 A. M. C. 769, 181 F. (2d) 6, cert. den. 71 S. Ct. 55, 340 U. S. 833).

5. If American law applies, it is incumbent upon defendant to treat plaintiff as if he were capable of using a modicum of care for his own safety. 302

6. Negligence may not be attributed to defendant shipowner where plaintiff seaman had the means furnished to adequately protect himself from the possible contingency causing the injury (*Larsson* v. *United States of America*, 1950 A. M. C. 176, affirmed 1950 A. M. C. 769, 181 F. (2d) 6, cert. den. 71 S. Ct. 55, 340 U. S. 833).

Defendant reserves the right to prepare additional requests to charge in the event such are required by unexpected testimony.

Dated, New York, N. Y., December 4, 1951. 303

Respectfully submitted,

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant,
80 Broad Street,
New York 4, N. Y.

The Court: Perhaps I can save you gentlemen some time. I do not expect to charge any of these in so many words, but in substance most of them seem to me to be good law which I will charge in substance, but if any of you have any objections as to what the other is requesting me to charge I will be glad to hear that.

Mr. Estabrook: If your Honor please, the one charge that Mr. Cantor and I are at odds about is his suggested charge No. 9. It is my position that there is no claim for loss of future earnings.

The Court: Yes?

Mr. Estabrook: And that is based on the pre-trial order,
305 paragraphs 6 and 2, and for that reason I did not introduce into evidence the plaintiff's subsequent earnings record.

Mr. Cantor: Well, your Honor——

The Court: That is provided for in the pre-trial order.

Mr. Cantor: That is true. There is no question about that, your Honor. We concede readily that there has been no impairment to date of his earning power, but the thought occurs to me that inasmuch as there is a permanent partial disability that is not only claimed by us, but admitted by their own physicians, because they found some degree of permanent partial disability, and we feel that has some bearing on the question of the plaintiff's future earning power which should not be dismissed entirely.

The Court: Well, it might but it happens that the ques-
306 tion of future earning power is out of the case as the result of the pre-trial order.

Mr. Cantor: Well, the wording of the pre-trial order has been impaired, but I do not think that was the intention at that time in view of all the facts here, and in view of the further fact that both parties give him a permanent partial disability, and it would not seem to be fair to exclude that consideration completely from the jury.

The Court: Well, I think that it has been done already. That is my ruling anyway, as that is not before me.

307

Mr. Cantor: Exception.

Of course, I also except to No. 6 of their prospective charges and that reads as follows:

"Negligence may not be attributed to defendant's shipowner where plaintiff seaman had the means furnished to adequately protect himself from the possible contingency causing the injury."

I think that there has been mixed up the issue of contributory negligence and negligence.

The Court: Well, I have some doubt about that, Mr. Estabrook.

Does that case involve a charge, or is that simply a statement from an opinion of the Court?

308

Mr. Estabrook: That is a statement from an opinion, your Honor.

The Court: I shall do my best adequately to explain the principle of negligence and contributory negligence.

Mr. Estabrook: I think Mr. Cantor's objection is well founded.

The Court: So that 5 and 6 I do not expect to charge in so many words. That is just one facet of the law.

Mr. Cantor: Yes.

The Court: Due care, No. 5.

Mr. Cantor: Yes.

Mr. Estabrook: That is from an opinion which has the most persuasive language that I find in it on contributory negligence.

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Mr. Cantor: That is what happens when you cull sentences from an opinion.

The Court: All right. I think we understand each other.

(Adjourned to December 7, 1951, at 10.30 A. M.)

310

Charge of the Court.

DIMOCK, J.

The Court: Ladies and gentlemen of the jury: It is now my duty to instruct you on the law that is to be applied in this case.

Under our legal system the determination of the law is the exclusive province of the Judge while the determination of the facts is the exclusive province of the jury. Thus you are to determine the facts in this case and apply the law as I state it to you.

The case concerns two claims, or, as the legal phrase goes, causes of action. They are asserted by the plaintiff, Evald Larsen, against the defendant J. Lauritzen. Both
311 of these causes of action arise out of an accident while the plaintiff was employed on the steamship Randa owned by the defendant.

In the first cause of action the plaintiff seeks to recover $12,500 damages for personal injuries sustained in the course of his employment as a seaman. This cause of action is based on negligence on the part of the defendant acting through his officers or seamen on the vessel.

In the second cause of action the plaintiff seeks to recover $2500 for what the law terms maintenance and cure. While both of these actions are grounded upon the same facts, the theory of the law applicable to each differs. This second cause of action for maintenance and cure, which I will briefly hereafter refer to as the second cause
312 of action, does not depend on negligence of the defendant or his employees. Regardless of his responsibility for the injury of the seaman while engaged in the service of the vessel, the owner is nevertheless obligated during the period of the seaman's disabiblity to pay his board and maintenance as an incident to the relationship of employer and employee. However, that is not true with respect to the first cause of action. There the plaintiff can recover against the defendant, or against the employer, only if

there was negligence on the defendant's part, or on the part of his officers or seamen.

The parties and the Court at a pretrial hearing formulated this issue for your determination in the following words:

Was plaintiff injured through any act of negligence of another member of the crew who was handling one end of the hatch board at the time of the accident?

And that is the issue for you to consider in connection with this first cause of action which involves negligence.

Now, to define the term "negligence" for you, a person is negligent when his act or omission to act is not what would be the conduct of a reasonably prudent person in 314 similar circumstances.

It will help you in deciding whether the defendant is negligent to consider the duty or duties placed upon him. The defendant and, therefore, his officers and seamen were under a duty to exercise ordinary care with respect to the plaintiff. That means they must act in such a manner as not to create a risk of injury to the plaintiff which they should have anticipated and guarded against. Just because there are risks incident to the operation of ships, do not make the mistake of thinking that the plaintiff assumed them by following the sea. The fact that the plaintiff worked under conditions which involved risks does not mean that he assumed the consequences of the risks.

In this case you have the testimony of the plaintiff as to 315 how he was injured. You are to decide whether the injury occurred as he said and, if so, whether the Swedish seaman was negligent in any way. In other words, did the Swedish seaman act in such a manner as to create a risk of injury to the plaintiff which the Swedish seaman should have anticipated and guarded against?

You can't regard the mere fact of an accident as the basis for finding the defendant negligent, nor are you to guess or speculate as to whether the defendant was negli-

gent. Your determination must be based upon facts or reasonable inferences. If you find that the defendant has not been negligent your verdict must be for the defendant on the first cause of action which is based on negligence.

The plaintiff must prove by a fair preponderance of the evidence every element of his cause of action. This burden of proof on the plaintiff is determined by your weighing the credible and convincing evidence tending to prove each element against the credible and convincing evidence tending to disprove that element. This is done in your minds just as a chemist would weigh two physical substances on a balancing scale. If the evidence tending to
317 prove either of the plaintiff's causes of action weighs more in your mind than the evidence tending to disprove it, then the plaintiff has sustained his burden of proof on that cause of action and he can recover. If, on the other hand, the balance is equal, or if the evidence tending to disprove one of the plaintiff's causes of action weighs more in your mind, then the plaintiff has failed to sustain his burden of proof on that cause of action, and your verdict will be for the defendant on that cause of action.

In this case the parties and the Court in their pretrial conference and order have formulated a second issue for you to determine besides this issue of negligence:

Did the negligent act of the plaintiff contribute to or help to bring about the accident?

318 That is, did any negligent act that the plaintiff himself did contribute to or bring about his own injury and, if so, to what extent did any negligent act of the plaintiff contribute to his injury?

The defendant claims that the plaintiff was negligent in the way he carried the hatch board and that that in some way contributed to the accident.

I have already given you a definition of negligence but it may be of some help to you if I repeat it here. A person

is negligent when his acts or omission to act are not what would be the conduct of a reasonable and prudent person in similar circumstances.

In deciding whether the plaintiff was negligent you should consider what is expected of him. The plaintiff is expected to exercise ordinary care, which means that he is to act in such a manner as not to create a risk of injury to himself that he should have anticipated and guarded against.

You should not make the mistake that a finding by you that the plaintiff was contributorily negligent would prevent his recovery if the defendant was also negligent and the defendant's negligence was the proximate cause of the 320
injury. In such case the liability is apportioned between the two. When I discuss the question of damages later I will explain to you how that is done.

There is one important difference between the negligence of the defendant and the contributory negligence of the plaintiff. Earlier I pointed out to you that the plaintiff has the burden to show by a fair preponderance of the evidence all of his claims in the first cause of action, and among them, of course, is the defendant's negligence. But it is just the other way around with respect to the plaintiff's contributory negligence. Contributory negligence is the charge made by the defendant and he has the burden of proof to show that the plaintiff's contributory negligence contributed to the accident by a fair preponderance of the 321
evidence.

You should consider all the circumstances of the case. I want to emphasize to you again that you are the sole judges of the facts. My mentioning the facts in the case has been only to illustrate to you the principles of law involved. You are to understand that I have no opinion one way or the other as to the facts.

Two kinds of evidence are presented in most lawsuits: One is called direct evidence and the other is called circumstantial evidence. Direct evidence shows the fact in issue itself without requiring any inference, though, of course, there is always the question of whether the evidence is to be believed. Circumstantial evidence, on the other hand, shows other facts from which the facts in issue can reasonably be inferred, and you are entitled to consider circumstantial evidence to that extent.

In your deliberations you must consider all the evidence tendered by both parties, but you are to disregard evidence which has been stricken from the record. You are
323 also to disregard the objections made by counsel during the trial, and the rulings made on those objections are not to influence you one way or the other.

Statements as to facts made during the trial, or even in the summations by counsel and by me, are only our recollections and you must not be controlled by such statements. I say again you are the sole judges of the facts, and it is your recollection alone that governs.

The determination of a fact turns on the credibility of a witness and other evidence. Whether a witness or other evidence is to be believed depends on many factors. It is the sort of decision you make in the important affairs of your everyday lives. It is a matter of common sense. You can consider the witness' demeanor on the stand, what interest, if any, he has in the outcome of the case,
324 how his story impresses you, how his story fits in with other evidence, and whether it jibes with common experience.

The same general approach applies to expert witnesses as I have just outlined to you for lay witnesses except that most of the matters that the expert testifies to are not within common experience but require expert training and knowledge. However, nevertheless you determine their credibility as you would make a determination in the ordinary affairs of your everyday lives.

Now, the question of damages: With respect to the first cause of action, if, and only if, after considering all the evidence you find that the defendant was negligent, then you will turn to the question of damages. In considering the question of damages I shall assume for the purposes of the discussion only that you have found that the defendant was negligent. The plaintiff claims several kinds of damages under this first cause of action, such as for loss of pay up to date, for his pain and suffering up to date and in the future, and for permanent injury. All these items of damages must be established by the plaintiff by this fair preponderance of the evidence which I have explained to you for him to recover.

326 Taking up his first claim for loss of pay, he is entitled to recover whatever pay he lost as a result of the injury. The elements which you compute his damages for loss of pay upon are these:

He was out of work from October 7, 1946, the date of the injury, until January 27, 1947, when he went back to work. That is about 17½ weeks. He testified that his rate of pay was $20.70 a week and that he averaged $50 a month, which would be about $12.50 a week, in overtime. You can use those factors in arriving at any verdict which you render for the loss of pay which the plaintiff suffered before he went back to work. And, of course, there should be deducted from any result that you arrive at this one week's pay of $20.70 which you have heard was given to him.

327 The other items of damages which he claims are for pain and suffering both in the past and in the future and for his permanent injury. You will recall that his claim for loss of wages is only in the past because he has gone back to work, but the other damages, the pain and suffering that he already suffered and that he is likely to suffer in the future, and the permanent injury which, of course, has no before and after relationship.

In this connection the pretrial order submits to you the issue: What were the plaintiff's injuries? This means, of course, the injuries resulting from the accident, and I need add nothing to the summations of counsel which went into that question.

This item of pain and suffering past and future and damages for permanent injury are difficult to determine since you have no yardstick of any kind except your own common sense and judgment based on experience, but the amount you set, however, must bear a reasonable relationship to the nature and extent of the pain and suffering and the permanency of the injury.

329 I mentioned earlier that if you find that the plaintiff was contributorily negligent and the defendant was also negligent the damages should be apportioned. The apportionment is made by determining the degree to which each one is negligent. Thus you might, for example, decide that the plaintiff and defendant were equally at fault. Thus if the damages were set at $10,000 you would award the plaintiff $5,000, or 50 per cent of the amount of damages. Similarly, if you found that the degree of the defendant's negligence was 60 per cent and the degree of the plaintiff's negligence was 40 per cent, you would award the plaintiff 60 per cent of the damages. The choice of this sum of $10,000 and the various percentages I have given you have no relationship to this case, of course. They are only examples for the purpose of illustration to you.

330 Again I caution you that my discussion of damages on this first cause of action is for your guidance only if you find that the defendant was negligent.

Now we consider a much less important matter and a much simpler matter, the second cause of action which is for maintenance and cure. Our standards for determining the liability, as I mentioned earlier, are wholly different from that with respect to negligence. If the plaintiff was injured while in the service of the vessel, and

that is substantially conceded in this case, then you are to award a recovery for maintenance and cure. The objective of an award for maintenance and cure is to provide the seaman with his subsistence and medical and nursing expenses from the date of the injury until he reaches his maximum possible cure. And, of course, that has no relation at all to the issue of negligence. The mere fact of an injury is the incident that brings this element into play; that is, an injury occurring while the plaintiff was in the service of the vessel and sustained while he was in the employ of the defendant. By "maximum possible cure" is meant the moment when he has made as full a recovery as is reasonably possible and when no further improvement 332
in his condition is reasonably to be expected.

In computing the award you must exclude from your consideration the award up to December 9, 1946, while the plaintiff was in various hospitals as an in-patient at the expense of the defendant. However, you may award maintenance and cure for the period while he was an out-patient; that is, from December 9th to January 9th while he was visiting the hospital but not staying there. Of course, you may not award any maintenance and cure after the time the plaintiff returned to work on January 27, 1947.

The rate for maintenance and cure is $6.00 a day. That is, if you find that the plaintiff was entitled to maintenance and cure for any number of days, then you multiply that 333
number by $6.00 and the result is the award for maintenance and cure on his second claim. Thus the period during which you are to consider the plaintiff's right to maintenance and cure is from December 9th, 1946, to January 27, 1947, or 49 days. But, of course, you are to deduct the amounts already paid by the defendant for the plaintiff's maintenance: that is, the sum of $3.80 a day for the period from December 10, 1946, to December 30, 1946, which is $79.80 according to my computation: the award

for 49 days which would be $294, and with the deduction of $79.80, that would leave the sum of $214.20 as the amount you may award under the second cause of action for maintenance and cure.

As I have told you again and again, there are two causes of action upon which you are to render a verdict. On each cause of action you can render a verdict either for the plaintiff or for the defendant. Thus on the first cause of action based on negligence you can render a verdict for either the plaintiff or the defendant; likewise, on the second cause of action for maintenance and cure you may render a verdict for either the plaintiff or the defendant.

335 If either verdict is for the plaintiff you will, of course, also fix the amount of damages. If you award the plaintiff damages it will be the complete and final award for his damages arising out of this accident.

If you render a verdict for the plaintiff or for the defendant you must be unanimous.

The case is submitted to you with the full confidence that the oath you took at the time you were sworn in as jurors will be fully adhered to. In the course of your deliberations if you require any of the exhibits you can send for them, or if you prefer you may take them with you, and if you want any of the testimony read during your deliberations you may so advise and the reporter will read it to you.

Mr. Cantor: May I make a request to charge at this time, your Honor?

336 The Court: Yes.

Mr. Cantor: I would like your Honor, if you wish, to charge in substance that the plaintiff's version of the facts constituting the accident and the surrounding circumstances in this case have been undisputed, and unless the jury should find that his account of the facts of the accident is inherently incredible, that it must stand as the facts of the case, and particularly so in view of the remarks of the counsel for the defendant that they do not challenge the

plaintiff's version of the manner in which the accident occurred.

The Court: I did not get your last part of that statement.

Mr. Cantor: I say particularly in view of the fact that the defendant's counsel at various times in his address to the jury—I don't know whether it is on the record or not—has stated that the defendant does not challenge the plaintiff's version of the manner in which the accident occurred.

The Court: Do you have any objection to that charge, Mr. Estabrook?

Mr. Estabrook: No, sir, your Honor.

The Court: I so charge. 338

Mr. Cantor: No further requests, your Honor.

Mr. Estabrook: If your Honor please, the defendant respectfully excepts to that portion of the charge stating that the defendant is liable for the negligence of his officers and seamen. The defendant requests the Court to charge that if the jury finds the defendant provided maintenance and cure and paid the man's wages and fulfilled his obligation under the Danish law, they must then find for the defendant.

The Court: That request is denied.

Mr. Estabrook: The defendant also excepts to that portion of the charge setting the rate of maintenance at $6.00 a day.

The defendant requests the Court to charge that the plaintiff is entitled; that is, if they find he is entitled to 339 maintenance, to that sum necessary for his board and lodging while he receiving out-patient treatment and while he is awaiting the maximum benefits to be expected from medical treatment, and that he should receive only the balance of the amount necessary for such board and lodging after deducting the payments already made on account of his maintenance.

The Court: I am not sure if I understand you. Is that request directed to the charge as to the $6.00 a day?

Mr. Estabrook: Yes, sir. We object to the Court fixing the sum of $6.00 a day, in view of the fact that there was no testimony that the amount paid was insufficient for the plaintiff's board and lodging in New York.

The Court: What have you to say to that?

Mr. Cantor: I don't recall at the moment as to whether the matter was covered by the pretrial order, but on the subject of maintenance and cure that has more or less been established as the customary rate, and this amount has more or less become so fixed that it was more or less established to be a matter of custom as between the parties in litigation of this character, more or less a matter of custom
341 accepted both by the defendant and by the plaintiff and by the Court, so that I feel that the Court is well justified in charging the jury that the customary rate of pay for maintenance and cure is $6.00 per diem.

The Court: That was my view of it and I had not expected that there would be any question raised about it, but rather than have any question in view of the fact that there is no testimony on the subject, I will amend my charge to the extent of leaving to the jury the reasonable amount to be paid for maintenance and cure not in excess of $6.00 a day.

Mr. Cantor: If your Honor please, although the inference of your Honor's charge I think is or should be clear, I believe that as a matter of excluding any possible doubt on the subject, that the Court should charge in words or
342 substance that the law of the case that they are to consider is the law that you have charged, and that they should disregard any references whatsoever to Danish law, and that the Danish law has no application to the facts in this case.

The Court: Yes, I so charge. That is a question of law which has been the subject of argument between Court and counsel, and I have determined that the Danish law has no application.

Mr. Estabrook: May I take an exception your Honor?

The Court: Yes.

Mr. Cantor: May I make one more last request, and hat is that as far as the testimony of experts is concerned, he jury may accept such part of the testimony or any or ll of the expert's testimony as they feel coincides or jibes ith their understanding of the facts in the case, and that he same thing applies to all or any part of the testimony f experts which is merely for their guidance and not to onstitute a finding or to be binding on them.

The Court: Yes, that is also so.

(At 11.00 A. M. the jury retired to deliberate.) 344

(At 11.35 A. M. the following proceedings occurred in ourt, out of the presence and hearing of the jury:)

The Court: Will counsel in the Larsen case come forward?

There is a sealed envelope from the jury. They wish to know the date of Mr. Larsen's accident and the date of his return to work aboard ship. Will it be satisfactory to counsel if we give them those dates on this paper and return the paper to them?

Mr. Estabrook: Yes, your Honor.

Mr. Cantor: Yes, sir.

The Court: The accident was October 7, 1946, and the other date is January 27, 1947; isn't that correct?

Mr. Cantor: Yes, sir.

Mr. Estabrook: Yes, sir. 345

(At 2.30 P. M. the jury returned to the courtroom and the following proceedings occurred:)

The Clerk: The jurors will please answer to their names in the order in which they are called.

(Jury roll called.)

The Clerk: Mr. Foreman, have you agreed upon a verdict?

The Foreman: Yes, we have.

The Clerk: How do you find?

346 *Verdict.*
Motion to Set Aside Verdict.
Motion to Dismiss.

The Foreman: We find for the plaintiff.

The Clerk: There are two causes of action: On the first and second cause of action how do you find?

The Foreman: On the first cause of action, for the plaintiff in the sum of $4,052.50, and the second cause of action $215.

The Clerk: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded in the minutes of this trial:

You say you find for the plaintiff in the amount of
347 $4,052.50 on the first cause of action, and $215 on the second cause of action, and so say you all.

The Jurors: Yes.

Mr. Cantor: No motions, your Honor.

The Court: Do you have any motions?

Mr. Estabrook: Yes, your Honor.

At this time the defendant moves to set aside the verdict and for a new trial on the ground that the verdict as to the first cause of action is excessive in amount, contrary to law, contrary to facts, and contrary to the weight of the evidence.

In this particular we point out that Larsen was out of work three and two-thirds months from October 7, 1946, to January 27, 1947. His earnings as testified to were $130 a month, making a total of $476.67. The defendant paid
348 him $20.70, making a net amount of $455.97 actual special damages. All his medical expenses and traveling expenses were paid by the defendant, and defendant submits that the sum of approximately $3,600 for pain and suffering is excessive.

The Court: Your motion is denied.

Mr. Estabrook: Defendant also moves to dismiss the complaint on the ground that this court is without jurisdic-

tion because this is not an action between citizens of the United States but is an action between citizens of Denmark and outside of the jurisdiction of this court. The defendant renews its motion on the ground that the Danish law is properly applicable and not the Jones Act.

The Court: That motion is denied.

Thank you, ladies and gentlemen. Your verdict shows a very careful consideration of the case.

Notice of Taxation.

UNITED STATES DISTRICT COURT. 350

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Sirs:

PLEASE TAKE NOTICE that the within is a copy of the items of the costs and disbursements in the above action, and that the same will be adjusted by the Clerk of the Court at his office in the United States Court House Building, Foley Square, in the Borough of Manhattan, City of New York, on the 21st day of December, 1951, at 11:00 A. M. in the forenoon of that day.

Dated: New York, December 13th, 1951. 351

Yours, etc.,

RICHARD M. CANTOR,
Attorney for Plaintiff,
Office & P. O. Address,
51 Chambers Street,
Borough of Manhattan,
City of New York.

352 *Notice of Taxation.*

To:

HAIGHT, DEMING, GARDNER, POOR & HAVENS, Esqs.,
Attorneys for Defendant,
80 Broad Street,
New York 4, N. Y.

Proposed Bill of Costs.

UNITED STATES DISTRICT COURT,

353 SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Attorney's Docket Fees	$20.00
Notarial Fees	1.50
Subpoena Duces Tecum Fee:	
Marine Hospital, Stapleton, S. I., N. Y.	4.00
Long Island College Hospital	2.00
Defendant	2.00
Clerk's fees	15.00
354 Total taxed at	$44.50

Dated: New York, December 21, 1951.

WILLIAM V. CONNELL,
Clerk.

Entered: 12/21/51.
U. S. D. C.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

I, RICHARD M. CANTOR, being duly sworn, do depose and say:

I am the attorney for the plaintiff herein, that the foregoing disbursements have actually been made and necessarily incurred herein and are reasonable and just.

RICHARD M. CANTOR.

Sworn to before me this
13th day of December, 1951. 356

MAXWELL OPPER
Notary Public in the State of N. Y.
Qualified in New York County
No. 31-8229600
Cert. filed in Kings and New York
Co. Clk's & Reg. Off.
Commission Expires March 30, 1952.

357

358

Judgment.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

The issues in the above entitled action having been brought on regularly for trial before the Hon. Edward J. Dimock and a jury, on December 5, 6, and 7, 1951, and the jury having rendered a verdict in favor of the plaintiff, it is

ADJUDGED: That the plaintiff have judgment against
359 the defendant, for the sum of $4,267.00.

Dated, New York, December 21, 1951.

WILLIAM V. CONNELL,
Clerk.

O'G
Dec. 21, 1951.

Plaintiff's costs taxed at $44.50.

WILLIAM V. CONNELL,
Clerk.

Filed: December 21, 1951.
360 Docketed as of December 24, 1951 at 9 A. M.

Stipulation Amending Title.

361

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IVALE JOHANN LARSEN,
Plaintiff,

against

"JOHANNES" LAURITZEN, first name being fictitious, real name being unknown,
Defendant.

362 IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto, that the title of the above action is amended to read as follows:

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

EVALD JOHANN LARSEN,
Plaintiff,

against

J. LAURITZEN,
Defendant.

Dated: New York, December 13th, 1951.

363

RICHARD M. CANTOR,
Attorney for Plaintiff,

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant.

So Ordered: December 19, 1951.

VINCENT L. LEIBELL,
U. S. D. J.

364 **Defendant's Notice of Appeal.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IVALE JOHANN LARSEN,
Plaintiff,
against
J. LAURITZEN,
Defendant.
Civ. 41-475

PLEASE TAKE NOTICE that J. Lauritzen, the defendant
365 above named hereby appeals to the United States Court of Appeals for the Second Circuit, from the judgment entered in this Court on or about the 21st day of December, 1951, on a jury verdict in favor of the plaintiff and against the defendant in the sum of $4,267.50 with costs taxed thereon in the sum of $44.50, and from each and every part thereof.

Dated, New York, N. Y., January 4, 1952.

Yours, etc.,

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant-Appellant,
80 Broad Street,
New York 4, N. Y.

366 To:

WILLIAM V. CONNELL,
Clerk.

RICHARD M. CANTOR, Esq.,
Attorney for Plaintiff-Appellee,
51 Chambers Street,
New York 7, N. Y.

367

Stipulation Extending Time to File Record on Appeal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto, that defendant's notice of appeal to the United States Court of Appeals for the Second Circuit having been filed on January 4, 1952, the time of the defendant, J. Lauritzen, to file the record on appeal herein with the United States Court of Appeals for the Second Circuit is extended to April 3, 1952, and that an order to this effect may be entered without further notice. 368

Dated: New York, N. Y., February 4th, 1952.

RICHARD M. CANTOR,
Attorney for Plaintiff.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant.

So ordered: 2/6/52.

THOMAS F. MURPHY,
U. S. D. J.

369

370

Stipulation Re Exhibits.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

EVALD JOHANN LARSEN,
Plaintiff-Appellee,

against

J. LAURITZEN,
Defendant-Appellant.

371

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that Plaintiff's Exhibits 1, 2, 3, 4, 5 and 6 in evidence and Defendant's Exhibit B in evidence shall not be printed in the transcript of record on appeal, but may be referred to and produced and handed to the Court on the argument herein by any party hereto.

Dated: New York, N. Y., March 4th, 1952.

RICHARD M. CANTOR,
Attorney for Plaintiff-Appellee.

372

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant-Appellant.

373

Stipulation as to Record.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true copy of the transcript of the record of said District Court in the above entitled matter as agreed on by the parties.

Dated: New York, N. Y., March 14, 1952.

374

RICHARD M. CANTOR,
Attorney for Plaintiff-Appellee.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant-Appellant.

375

376

Clerk's Certificate.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF NEW YORK } ss.:

I, WILLIAM V. CONNELL, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing record is a
377 correct transcript of the record of the said District Court in the above entitled matter as agreed on by the parties. The last date to file this record is April 3, 1952.

IN TESTIMONY WHEREOF, I have caused the Seal of the said Court to be hereunto affixed in the City of New York, in the Southern District of New York, this 14 day of March in the year of our Lord one thousand nine hundred and fifty-two and of the independence of the said United States the one hundred and seventy-sixth.

WILLIAM V. CONNELL,
Clerk.

378

UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

No. 246—October Term, 1951.

(Argued April 18, 1952 Decided May 2, 1952.)

Docket No. 22331

EVALD JOHANN LARSEN,
Plaintiff-Appellee,

v.

J. LAURITZEN,
Defendant-Appellant.

380

Before:

SWAN, *Chief Judge*,

AUGUSTUS N. HAND and FRANK, *Circuit Judges*.

Appeal from the United States District Court for the Southern District of New York.

HAIGHT, DEMING, GARDNER, POOR & HAVENS, Attorneys for appellant; James M. Estabrook and David P. H. Watson, of Counsel. 381

RICHARD M. CANTOR, Attorney for appellee; George Halpern, of Counsel.

382 *Opinion.*

PER CURIAM:

The judgment is affirmed on the authority of *Kyriakos* v. *Goulandris*, 2 Cir., 151 F. 2d 132 and *Taylor* v. *Atlantic Maritime Co.*, 2 Cir., 179 F. 2d 597, cert. den. 341 U. S. 915.

383

384

Judgment. 385

UNITED STATES COURT OF APPEALS,

SECOND CIRCUIT.

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 2nd day of May one thousand nine hundred and fifty-two.

Present:

HON. THOMAS W. SWAN,
Chief Judge,
HON. AUGUSTUS N. HAND,
HON. JEROME N. FRANK,
Circuit Judges. 386

EVALD JOHANN LARSEN,
Plaintiff-Appellee,

v.

J. LAURITZEN,
Defendant-Appellant.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed on the authority of Kyriakos v. Goulandris, 2 Cir., 151 F. 2d 132 and Taylor v. Atlantic Maritime Co., 2 Cir., 179 F. 2d 597, cert. den. 341 U. S. 915. 387

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

s/ ALEXANDER M. BELL,
Clerk.

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

EVALD JOHANN LARSEN

v.

J. LAURITZEN

JUDGMENT

United States Court of Appeals
Second Circuit
Filed
May 2, 1952
ALEXANDER M. BELL, Clerk

391

Clerk's Certificate.

UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF NEW YORK.

I, ALEXANDER M. BELL, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 1.31, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of

EVALD JOHANN LARSEN

392

against

J. LAURITZEN

as the same remain of record and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 30th day of June in the year of our Lord One Thousand Nine Hundred and Fifty-two, and of the Independence of the said United States the one hundred and seventy-sixth.

ALEXANDER M. BELL,
Clerk.

393

(Seal)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 226

J. LAURITZEN, Petitioner,

vs.

EVALD JOHANN LARSEN

ORDER ALLOWING CERTIORARI—Filed October 13, 1952

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office - Supreme Court, U. S.
FILED
JUL 25 1952
CHARLES ELMORE CROPLEY

Supreme Court of the United States

OCTOBER TERM, 1952

LIBRARY
SUPREME COURT, U.S.

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

JAMES M. ESTABROOK,
Counsel for Petitioner,
80 Broad Street,
New York 4, N. Y.

DAVID P. H. WATSON,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1952

No. _____

J. LAURITZEN,
Petitioner,

against

EVALD JOHANN LARSEN,
Plaintiff-Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of J. Lauritzen respectfully shows to this Honorable Court as follows:

Nature of the Proceedings

This is a petition for a writ of certiorari to review a final judgment of the United States Court of Appeals for the Second Circuit, filed May 2, 1952, affirming the judgment in favor of the plaintiff entered on December 21, 1951, in the District Court of the United States for the Southern District of New York.

Jurisdiction

The jurisdiction of this Court to grant a writ of certiorari is provided by Title 28, United States Code, Section 1254.

Opinions Below

The verdict of the jury in the District Court is printed at pages 115-116 of the record. The defendant's motions to dismiss and the denial thereof by the Trial Court are printed at pages 61, 97, 116 and 117 of the record. The judgment of the District Court of the United States for the Southern District of New York is printed at page 120 of the record. There is no reported District Court opinion.

The opinion of the United States Court of Appeals for the Second Circuit is reported in 196 F. (2d) 220 and is printed at pages 127-128 of the record and the judgment of the United States Court of Appeals for the Second Circuit is printed at pages 129-130 of the record.

Statement of the Facts

The complaint was filed on behalf of Evald Johann Larsen to recover the sum of $15,000 for injuries allegedly received while serving as an able-bodied seaman on board the S.S. Randa on October 7, 1946. Liability was predicated on the negligence of the defendant-owner through its employees under the provisions of Section 33 of the Act of June 5, 1920, Title 46, United States Code, Section 688, known as the Jones Act.

On July 25, 1946, Evald Johann Larsen, a Danish citizen and a resident of Denmark who was temporarily in New York City, signed articles to serve aboard the S.S. Randa as an A.B. at the standard rate of pay agreed upon by the Danish Seamen's Union (pre-trial order, 16, 44, Def. Exh. A, 45). The S.S. Randa was a vessel flying the Danish flag and so registered, and was owned and operated by the petitioner, J. Lauritzen (pre-trial order, 16), a Danish citizen. The articles signed by Larsen called for a voyage to South America and further (pre-trial order, 16, Def. Exh. A, 44, 45) and bound Larsen to serve aboard the S.S.

Randa for an indefinite period with the right to leave the vessel on seven days' notice, the owner having a similar right to discharge Larsen on seven days' notice (47).

The articles further stated that each member of the ship's crew was employed "on the basis of the regulations contained in the (Danish) Seaman's Act," as well as in accordance with the provisions set forth opposite each of their signatures (Def. Exh. A, 44, 45, middle of 1st page, directly above heavy horizontal line, also 2nd page, column 15).

After leaving New York the S.S. Randa called at various South American ports and arrived in Havana, Cuba, about the beginning of October, 1946 (26). On October 7, 1946, while the vessel was still in Havana, Larsen was injured when he fell from the top of No. 1 hatch into the hold while engaged in inserting hatch boards with a fellow seaman (33-34).

Following the accident Larsen was hospitalized in Havana, Cuba, at the petitioner's expense (pre-trial order, 15-16, 35, 49). Subsequently, Larsen was returned to the United States as a passenger aboard a vessel owned by the petitioner and upon arrival in New York was admitted to the U. S. Marine Hospital at Ellis Island, where again all hospital and medical expenses were paid by the petitioner (pre-trial order, 16, 37, 49). Larsen was discharged as an inpatient from the United States Marine Hospital on December 9, 1946 and received outpatient treatment at the petitioner's expense until January 9, 1947, at which time he was declared fit for duty (40-41, pre-trial order, 16).

Following the accident Larsen received all wages due him up to the date of the accident (pre-trial order, 16, 39), and also received the seven days wages to which he was entitled under the Danish Maritime Law (39-40 Def. Exh. D, 90-92). In addition, Larsen received maintenance and subsistence from December 10, 1946, the date he was discharged from the Ellis Island Marine Hospital, until December 30, 1946, (90). During the course of Larsen's treatment in New York, the petitioner offered Larsen free transportation to Denmark for further treatment, but this offer was refused

by Larsen (50). These were the benefits to which Larsen was entitled under the Danish law as subscribed to by Larsen when he signed the articles to serve aboard the S.S. Randa (Def. Exh. C, 20-21, 89; Def. Exh. A, 44, 45; Def. Exh. D, 90-92).

The Statute Involved

Section 33 of the Act of June 5, 1920, 41 Stat. 1007, Title 28, United States Code, § 688, known as the Jones Act, reads as follows:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

The Proceedings and Decisions Below

Upon the trial below in the United States District Court for the Southern District of New York before a jury the defendant, the petitioner herein, moved at the end of plaintiff's case, at the end of the defendant's case and after the jury verdict to dismiss the complaint for lack of jurisdiction. The motions were made on the grounds that this was an action between citizens of Denmark and, therefore, outside the jurisdiction of the Court and on the

grounds that the Danish Law was properly applicable and not the Jones Act. These motions were denied by the Trial Court (61, 97, 116-117). The Trial Court also denied defendant's request to charge that the jury must find for the defendant if it found that the defendant had fulfilled its obligations under the Danish law (113) and the defendant excepted to the charges of the Trial Court that defendant was liable to plaintiff for injuries caused by the negligence of defendant's officers and seamen (113) no such right being given by the Danish law, and the charge that the Danish law had no application in the case (114-115).

Thereafter, the defendant, the petitioner herein, J. Lauritzen, appealed from the judgment in favor of the plaintiff as entered on December 21, 1951, and in particular from the denial of the above motions made by the defendant, as well as from the above denials of defendant's requests to charge and from the charges of the Trial Court to the effect that American law, rather than Danish law was to be applied.

The United States Court of Appeals for the Second Circuit affirmed the judgment of the Trial Court on the authority of *Kyriakos* v. *Goulandris*, 151 Fed. 2d 132 (2nd Cir., 1945) and *Taylor* v. *Atlantic Maritime Co.*, 179 Fed. 2d 597 (2nd Cir., 1950) cert. den. 341 U. S. 915.

The Question Presented

Does the Jones Act govern the liability of a foreign shipowner to a foreign seaman who signs on a foreign vessel in a United States port and is subsequently injured aboard the vessel in a foreign port as a result of the negligence of a fellow-seaman when that foreign seaman has recovered all the benefits to which he is entitled under the articles which he has signed and under the laws of the country whose flag that vessel flies?

Reasons for Granting the Petition

1. The decision of the United States Court of Appeals for the Second Circuit in the instant case is in direct conflict with the holding of this Court in *New York Central R. R. Co.* v. *Chisholm,* 268 U. S. 29, 45 S. Ct. 402, 69 L. Ed. 828 (1925); *Jamison* v. *Encarnacion,* 281 U. S. 635, 50 S. Ct. 440, 74 L. Ed. 1082 (1930), and in *Cortes* v. *Baltimore Insular Line,* 287 U. S. 367, 53 S. Ct. 173, 77 L. Ed. 368 (1932).

In *New York Central R. R. Co.* v. *Chisholm, supra,* the Supreme Court of the United States considered the applicability of the Federal Employers' Liability Act to an injury sustained by an employee of an American railroad company while operating in Canada. This decision is in point, since the Jones Act states that the United States statutes modifying or extending the common law right or remedy in cases of personal injury to railway employees are to be applied to seamen's injuries. The Federal Employers' Liability Act of 1908 was thus incorporated into the Jones Act. The Supreme Court of the United States denied recovery under the Act to the administrator of the deceased railway employee who was fatally injured in Canada and held that there was no right of action based on the Federal Employers' Liability Act when the site of the alleged act of negligence was outside the United States.

Again, in *Jamison* v. *Encarnacion, supra,* the Court affirmed its position that a seaman's rights under the Jones Act depended on negligence, i.e., tort, and not upon contract. Under the Jones Act a seaman "* * * is entitled to recover if * * * his injuries resulted from * * * negligence" (p. 639) since "the Federal Employers' Liability Act does not create liability without fault" (p. 640).

The necessity of some element of negligence occurring in the United States is emphasized in *Cortes* v. *Baltimore Insular Line, supra,* where Justice Cardozo stated (p. 374) that "* * * Here performance was begun when the vessel

started on her voyage (from the United States) with Santiago (a co-plaintiff) aboard and with care and cure cut off from him unless furnished by officers and crew. From that time forth withdrawal was impossible and abandonment a tort."

Nothing in the record in this case now before the Court indicates the existence of any negligence before the "Randa" reached Havana.

In line with the above decisions of the Supreme Court of the United States, the holdings of the United States Court of Appeals for the Second Circuit in this case and in *Taylor* v. *Atlantic Maritime Co., supra,* would appear to be erroneous, since in both those cases the foreign seamen sustained their illnesses or injuries outside the territorial waters and continental limits of the United States.

2. The precise question here presented has never been directly passed on by the Supreme Court of the United States.

Since the passage of Section 33 of the Merchant Marine Act of 1920, 46 U. S. C. Sec. 688, hereinafter referred to as the Jones Act, numerous cases have arisen in the United States courts involving the rights of foreign seamen serving on foreign vessels to the benefits of the Jones Act. Many of these cases have been appealed to the United States Courts of Appeals with varying results, but the Supreme Court of the United States has never passed upon the applicability of the Jones Act to foreign seamen serving aboard foreign vessels.

In *Plamals* v. *S.S. Pinar Del Rio,* 277 U. S. 151, 48 S. Ct. 457, 72 L. Ed. 827 (1928), the question of the applicability of the Jones Act to a foreign seaman employed on a foreign ship and injured in American waters was expressly left open. Plamals was a Spanish citizen and a member of the crew of the British ship S.S. Pinar Del Rio. While the vessel was anchored in Philadelphia, Plamals was injured while being hoisted on a rope to paint the smokestack. Six months after the accident he began a proceeding *in rem* against the ship in the District Court for the Southern

District of New York. The District Court ruled that the rights and liabilities of the parties were fixed by the law of the ship's flag, and accordingly dismissed the libel. The Court of Appeals for the Second Circuit held on appeal that a lien against the vessel was essential to every proceeding *in rem*, and that no such lien arose by reason of the Jones Act in favor of the injured seaman. Upon that ground the Court of Appeals affirmed the dismissal of the libel. The Supreme Court of the United States affirmed on those grounds in an opinion by Mr. Justice McReynolds, writing as follows at page 155:

> "We agree with the view of the Circuit Court of Appeals and find it unnecessary now to consider whether the provisions of Section 33 are applicable where a foreign seaman employed on a foreign ship suffers injuries while in American waters."

The Supreme Court of the United States also left the question open in *Uravic, Administratrix* v. *F. Jarka Company, Inc.*, 282 U. S. 234, 51 S. Ct. 111, 75 L. Ed. 312 (1931). The action was for causing the death of the plaintiff's intestate, Uravic, an American citizen employed as a longshoreman by F. Jarka Company, a Delaware corporation. At the time he received the injury that caused his death, Uravic was unloading a German vessel in the harbor of New York. The Supreme Court of the United States, in an opinion by Mr. Justice Holmes, reversed a judgment of the Court of Appeals of the State of New York which had affirmed the dismissal of the complaint in the death action brought against the Jarka Company. The Supreme Court of the United States held that the Jones Act was applicable to the case of an American longshoreman injured aboard a private foreign ship in American waters while engaged in discharging that ship. With respect to the applicability of the Jones Act to foreign seamen on foreign vessels, however, the question was left open, for Mr. Justice Holmes wrote as follows (p. 241):

"If it should appear that, by valid contract or special circumstances, seamen on a foreign ship should not be protected by the statute, it will be time enough to consider the exception when it is presented. But the purport of the words is plain and there is no reason to deny stevedores the benefit of them, even if exceptions to the rule for seamen may be found upon peculiar facts."

Despite the anticipatory language of these opinions, the frequently-presented problem of the applicability of the Jones Act to a foreign seaman serving on a foreign vessel, who is injured on the high seas, has never been passed upon by the Supreme Court of the United States.

3. In order to effect uniformity of decisions in this field, it is necessary for the Supreme Court of the United States to pass upon the question.

Since the decisions of the Supreme Court of the United States in *Plamals* v. *S.S. Pinar Del Rio, supra,* and *Uravic, Administratrix* v. *F. Jarka Company, Inc., supra,* the question of the applicability of the Jones Act to foreign seamen serving aboard foreign vessels has been passed upon by the United States District Courts and the United States Courts of Appeals, as well as by the New York Court of Appeals, with varying results.

In 1937, in *The Paula,* 91 F. (2d) 1001, 1937 A. M. C. 988, cert. den. 302 U. S. 750, 58 S. Ct. 270, the Court of Appeals for the Second Circuit affirmed the District Court decree dismissing the libel and declining to exercise jurisdiction in a case involving a German seaman who had signed articles in Chile to serve on a Danish ship on a voyage to Brooklyn, New York. The libelant was injured during the performance of his duties on board the ship while at the port of Jacksonville, Florida. The libelant was relegated to his claim under the Danish law before the Danish Consul.

In 1942, in *Gambera* v. *Bergoty,* 132 F. (2d) 414, 1943 A. M. C. 45, cert. den. 319 U. S. 742, 63 S. Ct. 1030, 87 L. Ed. 1699, the United States Court of Appeals for the

Second Circuit granted relief under the Jones Act to an alien seaman injured on board a foreign ship in United States territorial waters on a voyage from Trenton, New Jersey, to New York. The added factors in that case were, however, that the libelant had been domiciled in the United States for over twenty years, during the greater part of which he had served on American ships, and he had, in fact, already taken out his "first papers" for naturalization.

In 1945, in *Kyriakos* v. *Goulandris,* 151 F. (2d) 132, 1945 A. M. C. 439, the Court of Appeals for the Second Circuit held that the Jones Act was applicable to a Greek seaman who had signed articles to serve aboard a Greek vessel, the articles having been signed in a United States port. The Court was careful to point out, however, that Kyriakos had signed on the vessel for a voyage beginning and ending in the United States and that he had been injured when assaulted ashore by a fellow crew member in Fernandina, Florida. There was a strong dissent to this decision written by Judge Learned Hand.

Following the *Kyriakos* decision, the Court of Appeals for the Second Circuit considered the applicability of the Jones Act to foreign seamen in *O'Neill, Administratrix* v. *Cunard White Star Line, Ltd.,* 160 F. (2d) 446, 1947 A. M. C. 505. In that case the Court denied Jones Act relief to the administratrix of a British seaman injured on the high seas, who had signed articles in Britain to serve aboard a British vessel, even though the deceased had been a long-time resident in the United States. In so doing the Court stated that there was nothing in the language of the Jones Act to indicate that it was to be applied to injuries occurring on the high seas.

In 1948, in *Sonnesen* v. *Panama Transport Co.,* 298 N. Y. 268, 82 N. E. (2d) 569 (1948); cert. den. 337 U. S. 919, 69 S. Ct. 1157, the New York Court of Appeals denied the benefits of the Jones Act to a Danish seaman, who had signed articles in New York for a voyage beginning and terminating in the United States, when that seaman sought recovery for an illness occurring on the high seas. In de-

nying the relief sought, the New York Court of Appeals ruled that the tort liability was to be determined by the law of the flag, in that case the law of Panama.

In 1950 the United States Court of Appeals for the Second Circuit decided the case of *Taylor* v. *Atlantic Maritime Co.*; 179 F. (2d) 597, 1950 A. M. C. 352, cert. den. 341 U. S. 915, 71 S. Ct. 736. Taylor, a Panamanian citizen, sought to recover for aggravation of tuberculosis from the Panama shipowner under the provisions of the Jones Act, Taylor having signed articles to serve aboard the vessel in Norfolk, Virginia. The United States Court of Appeals for the Second Circuit, in an opinion by Judge Learned Hand, held that Taylor was entitled to recover under the Jones Act and, in so holding, reached a conclusion diametrically opposite from that reached by the New York Court of Appeals in *Sonnesen* v. *Panama Transport Co.*, *supra*.

Now, in 1952, in the instant case, the United States Court of Appeals for the Second Circuit has in effect held that the Jones Act is to be applied to a foreign seaman serving aboard a foreign vessel, who signed articles in a United States port, but who was injured through the negligence of a fellow-seaman in a foreign port, even though the foreign seaman proceeded to recover all the benefits to which he was entitled under the terms of the articles which he signed and under the law of the flag of the vessel.

The confusion which has resulted from this succession of cases in the United States District Courts, the United States Courts of Appeals and in the State Courts can only be clarified and settled through a decision of the Supreme Court of the United States on the question of the applicability of the Jones Act to foreign seamen serving aboard foreign vessels where the place of sign-on is a United States port and where the place of injury is a foreign port.

4. The decision of the United States Court of Appeals for the Second Circuit in this case is at variance with the

long established law as expressed by this Court as well as other Courts of the United States.

The principle has been laid down time and again that in choosing between the application of the law of the port or the law of the flag, the law of the flag shall control as to all those matters affecting only the internal economy and discipline of the vessel involved. In line with this principle, the law of the port has been applied only when the events occurring on board foreign vessels in our ports were of such a nature as to effect the peace and tranquillity of the port.

The Scotland, 105 U. S. 24, 26 L. Ed. 1001 (1881);
The Belgenland, 114 U. S. 355, 5 S. Ct. 860, 29 L. Ed. 152 (1884);
Wildenhus's Case, 120 U. S. 1, 7 S. Ct. 385, 30 L. Ed. 565 (1887);
United States v. *Rodgers*, 150 U. S. 249, 14 S. Ct. 109, 37 L. Ed. 1071 (1893);
Thompson Towing & Wrecking Association v. *McGregor*, 207 F. 209 (6th Cir., 1913);
Grand Trunk Ry. Co. v. *Wright*, 21 F. (2d) 814 (6th Cir., 1927), affirmed 278 U. S. 577, 49 S. Ct. 176, 73 L. Ed. 516.

In the decision in *Taylor* v. *Atlantic Maritime Co., supra*, the United States Court of Appeals for the Second Circuit subscribed to this general principle, but then proceeded to ignore it by applying the Jones Act, even though that statute did not specifically call for such application, to matters affecting the relationship between a foreign vessel and its foreign crew on the high seas. In the instant case, which the United States Court of Appeals held was governed by *Taylor* v. *Atlantic Maritime, Co., supra*, the Jones Act was applied to an incident arising in a foreign port involving a Danish seaman aboard a Danish vessel.

5. The question of whether the Jones Act governs the liability of a foreign shipowner to a foreign seaman who signs on a foreign vessel in a United States port and is subsequently injured on the high seas, when that seaman has recovered all the benefits to which he was entitled under the foreign law, is a substantial one which should be passed on by the Supreme Court of the United States.

Prior to the decision of the United States Court of Appeals in *Taylor* v. *Atlantic Maritime Co., supra,* it had been assumed by foreign shipowners that their obligation to foreign seamen was governed by the law of the flag and the contractual terms of the articles signed, regardless of the place of sign-on. At the present moment foreign vessels calling at United States ports who sign on foreign seamen while in those ports are subjected to possible double liability —both under the law of the flag and under the laws of the United States. The latest decisions have raised a question as to the validity of the articles signed by these foreign seamen in United States ports. As a result, foreign shipowners operating vessels which call at United States ports, of which there are a great number, have been unable to determine the extent of their liability to foreign seamen signed on in the United States for personal injuries occurring aboard their vessels.

Social justice requires that prompt attention be given to injured seamen in accordance with the law of the flag; for it is the consul of the nation concerned who has disciplinary power over the master. By refusing to permit proof of the Danish law, which enforces liability without fault on principles akin to workmen's compensation, the courts below retarded, rather than advanced, seamen's rights. *Farrell* v. *United States, et al.*, 336 U. S. 511 (1949).

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued by this Honorable Court to review the decision and judgment herein of the United States Court of Appeals for the Second Circuit.

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Supreme Court of the United States

OCTOBER TERM, 1952

No.

J. LAURITZEN,
Petitioner,
against
EVALD JOHANN LARSEN,
Plaintiff-Respondent.

BRIEF FOR PETITIONER

POINT I

The terms of the Jones Act do not make it applicable to foreign seamen on foreign vessels who are injured beyond the territorial limits of the United States.

The Jones Act, Section 33 of the Merchant Marine Act of 1920, was derived from Section 20 of the Seamen's Welfare Act of March 4, 1915, 38 Stat. 1185. The 1915 Congressional Act was entitled "Act to Promote the Welfare of American Seamen." Section 20 of that Act provided as follows:

> "That in any suit to recover damages for an injury sustained on board a vessel or in its service, seamen having command shall not be held to be fellow-servants with those under their authority."

By the amendment of this section in 1920, seamen were given a right of action against their employers for injuries sustained as a result of the negligence of the master, or members of the crew, and their dependents a right of recovery for their death. This was accomplished by adopting the provisions of the Federal Employers' Liability Act of 1908 and its amendments and making them a part of the Maritime Law of the United States.

Nowhere in the Jones Act does it state that the provisions therein contained shall be or should be applicable to foreign seamen serving aboard foreign vessels who are injured outside the territorial limits of the United States. It has been contended that although the express language does not so state, it was, nevertheless, the intent of Congress to include within the provisions of this section foreign seamen serving aboard foreign vessels. The language of the section, far from supporting such a contention, would appear to point the other way. The closing sentence of Section 33 reads as follows:

> "* * * Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

The use of the word "jurisdiction" has been interpreted not to relate to the general jurisdiction of the court, but to venue only. *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924). Even granting such an interpretation of the word "jurisdiction," however, this closing sentence of Section 33 makes it abundantly clear that Congress had in mind domestic employers and shipowners rather than foreign shipowners when it adopted this particular phraseology.

What foreign shipowner would be likely to reside in or have his principal office in the United States? How would a foreign seaman proceed under the language of the Jones Act if his employer, the foreign shipowner, did not live in the United States and did not have any office located within the United States?

If Congress had intended to give a remedy to the foreign seaman serving aboard a foreign vessel under the Jones Act, it could very easily have so provided by giving him an *in rem* remedy. With such a remedy available, the foreign seaman could have proceeded against the vessel upon her arrival in any United States port. It is significant that Congress did not make any such provision. A lien against the vessel is essential to every proceeding *in rem*, and no such lien arises by reason of the Jones Act in favor of an injured seaman. This Court specifically so held in *Plamals* v. *S.S. Pinar Del Rio*, 277 U. S. 151, 48 S. Ct. 457, 72 L. Ed. 827 (1928).

There may be isolated instances in which the defendant employer of the foreign seaman, while having his principal office located in the foreign country, may at the same time have an office in this country, so as to allow the injured foreign seaman to start an action under the Jones Act in the court of the district in which such local office is located, but if we are to impute to Congress the intent to provide for foreign seamen serving aboard foreign ships under the terms of the Jones Act, then we must be prepared to admit that by the use of the language of the Act as presently written, Congress has given only a partial remedy, since the majority of foreign seamen would find it impossible to comply with the jurisdiction and venue requirements as presently constituted.

It has been contended that the remedy of the Jones Act is available to foreign seamen serving aboard foreign vessels based on the decisions of this Court in *Patterson* v. *Bark Eudora*, 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002 (1903); *Sandberg* v. *McDonald*, 248 U. S. 185, 39 S. Ct. 84, 63 L. Ed. 300 (1918); *Strathearn S.S. Co.* v. *Dillon*, 252 U. S. 348, 40 S. Ct. 350, 64 L. Ed. 607 (1919); and *Jackson* v. *S.S. Archimedes*, 275 U. S. 463, 48 S. Ct. 164, 72 L. Ed. 374 (1928).

Patterson v. *Bark Eudora, supra*, involved Section 24 of the Act of December 21, 1898, 30 Stat. 755, 763, which amended Section 10 of Chapter 121 of the Laws of 1884.

This amendment made it unlawful in any case to pay any seaman wages in advance of the time when he had actually earned same. It was further stated that this section was to be applicable as well to foreign vessels as to vessels of the United States. The case involved a question of the power of Congress to so enact a provision applicable to foreign vessels. In the words of Mr. Justice Brewer, at page 173:

> "But the main contention is that the statute is beyond the power of Congress to enact, especially as applicable to foreign vessels. It is urged that it invades the liberty of contract which is guaranteed by the Fourteenth Amendment to the Federal Constitution * * *."

The Supreme Court held that the provision making the Act specifically applicable to foreign vessels was constitutional and within the domain of Congress under the commerce clause of the Constitution. The holding of the Court, therefore, was not that Congress intended to make the statute applicable to foreign vessels, but only that Congress had not trespassed on constitutional rights in making the statute specifically applicable to foreign vessels. The most that can be said for this case in connection with the applicability of the Jones Act to foreign vessels and foreign seamen is that Congress would be within constitutional limits if it were to provide that the Jones Act were to apply to foreign vessels and foreign seamen serving on those vessels. The value of the holding in *Patterson* v. *Bark Eudora, supra;* in this connection is vitiated by the fact that in the Jones Act Congress has made no such specific provision.

Sandberg v. *McDonald, supra,* involved the interpretation of Section 11 of the Seaman's Act of March 4, 1915, 38 Stat. 1164, which made similar provisions prohibiting the advance payment of wages to a seaman and also stated that the provisions were to apply as well to foreign vessels while in the waters of the United States as to vessels of the United States. This statute had its origin in the very same Dingley

Act of 1884, discussed above in *Patterson* v. *Bark Eudora, supra.* Here the Supreme Court of the United States held that the provisions of Section 11 did not apply to advancements made to alien seamen shipping abroad on foreign vessels, pursuant to contracts valid under the foreign law. This Court held that specific provisions had been made to apply Section 11 to foreign vessels while in the waters of the United States, but that there was no intent to regulate the affairs of the foreign vessels while outside the territorial waters of the United States, since, as stated at page 195:

> "Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction."

Strathearn S.S. Co. v. *Dillon, supra,* presented questions arising under the Seaman's Act of March 4, 1915, 38 Stat. 1164. This was the same statute considered in *Sandberg* v. *McDonald, supra,* but here this Court was required to consider Section 4 of the Act, which stated that every seaman on a vessel of the United States was to be entitled to receive, on demand, from the master of the vessel one-half of his wages earned to date at every port where such vessel might load or deliver cargo before the end of the voyage. Here again, however, the section was made specifically applicable to seamen on foreign vessels while in the harbors of the United States. It also provided that the courts of the United States were to be open to such seamen for the enforcement of the Act. The Supreme Court of the United States rejected the contention that the fact that certain contracts which ran counter to the purposes of the statute were voided, rendered the statute unconstitutional as being destructive of contract rights. The Supreme Court held that the matter was fully considered in *Patterson* v. *Bark Eudora, supra.*

Finally, in *Jackson* v. *S.S. Archimedes, supra,* the Supreme Court again considered Section 10 of the Dingley Act of 1884, as amended by the Seaman's Act of 1915, and

the Merchant Marine Act of 1920, as it related to advance wages paid by foreign vessels to foreign seamen while in foreign ports. Here again, the Supreme Court held, that in the absence of a specific provision applying the Act to advance wages paid by foreign vessels to foreign seamen while in ports other than the United States, such payments were not covered by the Act, either expressly or by implication.

These cases hold, therefore, no more than that it would be constitutional for Congress to provide that foreign seamen serving upon foreign vessels were to be considered within the framework of the remedies available under Section 33 of the Merchant Marine Act of 1920—that is, the Jones Act. But they also hold that, although these statutes relating to seamen were valid when applied to vessels within United States waters, they were not to be applied to acts committed in foreign ports.

It is not the contention of the petitioner that Congress is without power to so legislate as to foreign vessels and foreign seamen, but it *is* contended that there is no language in Section 33 of the Merchant Marine Act of 1920 making the provisions applicable to foreign vessels and foreign seamen, and that, in the absence of such express provisions, we should not impute to Congress an intent which is totally lacking on a reading of the statute or through reference to the legislative history or by reference to the title of the Seaman's Act of 1915, 38 Stat. 1164, to which the Jones Act was an amendment, which read in part:

> "An act to promote the welfare of American seamen in the Merchant Marine of the United States."

While admitting that the title is no part of a statute and cannot be used to set at naught the statute's obvious meaning (*Patterson* v. *Bark Eudora, supra*), the title here does serve as an indication of the intent of Congress, since nowhere in Section 33 is there any contradictory language to indicate that foreign seamen serving upon foreign vessels

were intended to be included in the class of seamen whose welfare was to be promoted.

The question of the applicability of the Jones Act to an injury sustained by an alien on the high seas was discussed by Judge Learned Hand in *O'Neill* v. *Cunard White Star, Ltd.*, 160 F. (2d) 446, 1947 A. M. C. 505 (2d Cir., 1947). In that case the Court of Appeals for the Second Circuit denied the benefits of the Jones Act to the administratrix of a British seaman injured on the high seas, who had signed articles in Britain to serve aboard a British vessel, even though the deceased had been a long-time resident of the United States. The language of the decision of Judge Learned Hand is significant in that it was written after the decision of that same court in *Kyriakos* v. *Goulandris*, 151 F. (2d) 132, 1945 A. M. C. 439 (2d Cir., 1945), whereby a Greek seaman who had signed on a Greek vessel for a voyage beginning and ending in the United States was allowed to recover under the terms of the Jones Act for an injury sustained ashore in Florida, when he was assaulted by a fellow crew member. In his decision in the *O'Neill* case, Judge Learned Hand indicated that the *Kyriakos* case did not help the Court to decide whether it should now hold that the Jones Act was applicable, since in the *Kyriakos* case as well as in other prior cases the act or omission was within United States waters. Judge Learned Hand wrote as follows (at page 448):

> "* * * It is true that a state may impose duties upon its own nationals while they are abroad; but *the plaintiff must prove that Congress meant to impose duties upon the nationals of other states while they were beyond the territorial limits of the United States*, a proposition vastly different in its consequences. Perhaps Congress might go even so far as that, granted an occasion pressing enough; but surely there should be the clearest warrant of its purpose to do so, for it is as extreme an exercise of power as one can well imagine: a bit of absolution beyond all ordinary conventions.

> *There is nothing in the books leading us to suppose that the Act should be so construed; rather, the contrary.* In *Uravic* v. *Jarka Co.*, for example, the whole discussion proceeds on the assumption that it is a question of the lex loci delicti; and, as we have just explained, our own decisions are irrelevant. We are thrown back upon the statute itself. Is there sufficient reason for supposing that Congress meant to confer upon American seamen the new rights against all employers no matter where the wrongful act occurs? * * * *The purpose of Congress, so far as we can reconstruct it, seems to us therefore rather to forbid, than to justify, such an interpretation of the words of the Act, which are themselves neutral;* and, as we have tried to show, all analogies are in accord. We hold that so far as the libel invoked the Jones Act, it was bad on the merits, and the order was right." (Emphasis supplied.)

According to the language of the opinion, Judge Hand did not believe in 1947 that Congress intended the Jones Act to apply to seamen regardless of the place of injury.

Judge Learned Hand later expressed his opinion as to the intent of Congress on this subject in 1950 in his opinion in *Taylor* v. *Atlantic Maritime Co.*, 179 F. (2d) 597, 1950 A. M. C. 352, cert. den. 341 U. S. 915, 71 S. Ct. 736, the facts of which have already been outlined in the petition. In discussing the subject, he wrote as follows at page 600:

> "* * * To Judge Swan and me it seems, on the other hand, that, before we impute to Congress the will to change the long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose. We of course recognize that it is only a question of interpreting the statute, not of power;[16] but the possible consequences of the innovation seem to us to forbid its ready assumption under the facile phrase of the 'policy of the Act.' * * *"

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[16] "*Patterson* v. *Bark Eudora*, 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002; *Strathcarn S.S. Co.* v. *Dillon*, 252 U. S. 348, 40 S. Ct. 350, 64 L. Ed. 607."

It would appear, therefore, that Judge Hand was unwilling to impute to Congress the intent to apply the Jones Act to foreign seamen serving aboard foreign vessels unless there could be found a definite expression of that purpose. As will be pointed out later, the Court never indicated in the *Taylor* case where any such evidence of the intent of Congress was found, but nevertheless proceeded to ignore the long settled international understanding that the law of the flag should control in such matters and held that Taylor could recover under the Jones Act. In so holding, the Court left unanswered the question of where the expression of such an intent on the part of Congress was to be found.

POINT II

The Jones Act is not applicable to this action, since the action sounds in tort and must be governed by the law of the flag and the law of the place of the injury.

In this action a Danish seaman seeks recovery under the Jones Act (complaint, 6) for injuries sustained aboard a Danish ship while the ship was in Havana, Cuba (pre-trial order, 16), and the only connection with the United States was that the seaman signed articles on the Danish form while temporarily in New York (pre-trial order, 16, 24, 44).

It is submitted that the basis for the recovery sought against the shipowner is in fact the alleged liability of the shipowner for the tortious conduct of a fellow-seaman of the plaintiff, and that this liability must be governed by the Danish law, the law of the flag and the law of the place of the injury.

In *Taylor* v. *Atlantic Maritime Co., supra,* the basic facts of which have been set out above, Judge Learned Hand, in considering the question of the law to be applied to torts at sea, wrote as follows at page 598:

> "The variant at bar is that the seaman signed articles in the United States. So far as such a claim sounds in tort, the law of the flag should still apply, which will not include the Jones Act."

In *Kyriakos* v. *Goulandris, supra,* Kyriakos sought to recover from the Greek shipowner for injuries sustained when a fellow crew member attacked him ashore in Fernandina, Florida. That Judge Learned Hand in his dissenting opinion considered that the liability of the shipowner, if anything, was a tort liability is brought out by the following at page 140:

> "In closing it is perhaps well to notice that, although the assault took place ashore, the only question is whether Bouritis's undoubted liability is to be imputed to the ship's owner."

There is no question but that Bouritis's liability towards Kyriakos based on his unwarranted assault was a tort liability, and if that liability is to be imputed to the shipowner, it would still be a liability sounding in tort.

In *Sonnesen* v. *Panama Transport Co.*, 298 N. Y. 268, 82 N. E. (2d) 569 (1948), cert. den. 337 U. S. 919, 69 S. Ct. 1157, the New York Court of Appeals indicated that it felt that the liability of a shipowner to one of its seamen who contracted tuberculosis was a tort liability, writing as follows at page 266:

> "We think the jury was justified, on the evidence, in finding that defendant's conduct toward plaintiff was wrongful and tortious (see *Scarff* v. *Metcalf*, 107 N. Y. 211; *Cortes* v. *Baltimore Insular Line, supra,* 287 U. S. at pp. 372-376), but we find no basis for applying the Jones Act to that wrong."

Further support for the contention that recovery under the Jones Act for an injury suffered by reason of the negligence of a fellow-servant is a recovery for a tort is found in *New York Central R. R. Co.* v. *Chisholm*, 268 U. S. 29,

45 S. Ct. 402, 69 L. Ed. 828 (1925), where the Supreme Court considered the applicability of the Federal Employers' Liability Act to an injury sustained by an employee of an American railroad company while operating in Canada. This decision is in point since the Jones Act states that the United States statutes modifying or extending the common law, right or remedy in cases of personal injury to railway employees shall apply to seamen's injuries. The Federal Employers' Liability Act of 1908 was thus incorporated into the Jones Act. In this case the Supreme Court denied recovery under the Federal Employers' Liability Act to the administrator of the deceased employee of the New York Central Railroad who was fatally injured in Canada, and made it quite clear that the recovery, if anything, was a tort recovery in the following terms at page 31:

> "The statute under consideration lacks the essential characteristics of those, now very common, which provide for compensation to employees injured in the line of duty irrespective of the master's fault. It only undertakes to impose liability for negligence which must be shown by proof (*Southern Ry.* v. *Gray,* 241 U. S. 333, 339; *New York Central R. R.* v. *Winfield,* 244 U. S. 147, 150) and demands under it are based wholly upon tort."

This decision interprets the very statute with which we are presently concerned, and holds, in effect, that it deals with tort rather than contract remedies and that it is not to be applied extra-territorially, for Mr. Justice McReynolds stated that, upon a construction of the Act, the action would not lie, since:

> "The carrier was subject only to such obligations as were imposed by the laws and statutes of the country where the alleged act of negligence occurred; and the administrator could not rely upon any others."

New York Central R. R. Co. v. *Chisholm, supra,* presented a situation even more striking than the one at hand, since

the plaintiff's decedent had not only been employed in the United States, but was also a citizen of the United States and predominantly domestically employed. The holding of the Supreme Court is that there can be no right of action based upon the Federal Employers' Liability Act when the site of the alleged act of negligence is outside the United States. It would follow, therefore, that the Jones Act would be similarly limited since the Jones Act expressly extends to seamen all the United States statutes modifying or extending the common law in cases of personal injury to railway employees. If the United States Supreme Court has held that the Federal Employers' Liability Act is not to be extended beyond the borders of the United States, even in cases of injury to United States citizens employed in the United States, then there would seem to be no grounds upon which the application of the Jones Act could be extended to injuries sustained by foreign seamen in a foreign port aboard a foreign vessel.

This holding was affirmed in *Cortes* v. *Baltimore Insular Line,* 287 U. S. 367, 53 S. Ct. 173, 77 L. Ed. 368 (1932), the Supreme Court considering the question of liability of an American shipowner for an injury suffered by a seaman in the course of his employment as a result of the failure of the master of the ship to furnish him care or cure when stricken with pneumonia. This Court held that such an injury was a "personal injury" resulting from negligence within the purview of Section 33 of the Merchant Marine Act as supplemented by the Federal Employers' Liability Act. In discussing the question of whether a right of action was given to the personal representative if the injury resulted in death, Justice Cardozo made it clear that he considered the liability to be one in tort when he wrote as follows at page 374:

> "Here performance was begun when the vessel started on her voyage with Santiago aboard and with care and cure cut off from him unless furnished by officers or crew. From that time forth withdrawal was impossible and abandonment a tort. Given a

> relation involving in its existence a duty of care irrespective of a contract, a tort may result as well from acts of omission as of commission in the fulfillment of the duty thus recognized by law."

An essential element of the tort, i.e., negligence, thus occurred in the port of departure. This factor appears neither in *New York Central R. R. Co.* v. *Chisholm, supra,* where the negligence occurred in Canada, nor in the case at bar, where the negligence occurred in Cuba.

The necessity for negligence as the basis for recovery under the Jones Act and further affirmation that liability thereunder sounds in tort, not contract, is found in *Jamison* v. *Encarnacion,* 281 U. S. 635, 50 S. Ct. 440, 74 L. Ed. 1082 (1930). As Justice Cardozo stated, a seaman "is entitled to recover if his injuries resulted from * * * negligence" (p. 639), "* * * the Federal Employers' Liability Act does not create liability without fault" (p. 640).

Some argument was made in the opinion in *Taylor* v. *Atlantic Maritime Co., supra,* that the decision in *New York Central R. R. Co.* v. *Chisholm, supra,* is impaired by *Cortes* v. *Baltimore Insular Line, supra.* This argument is based on the statement in the latter case at page 377 that:

> "We do not read the act for the relief of seamen as expressing the will of Congress that only the same defaults imposing liability upon carriers by rail shall impose liability upon carriers by water."

Any distinction which Mr. Justice Cardozo pointed out in his decision in *Cortes* v. *Baltimore Insular Line, supra,* when read in context, relates only to the question of what constitutes negligence towards an employee on the part of a shipowner as against what constitutes negligence towards an employee on the part of a railroad company. No distinction is made as to the necessity for negligence. This is pointed up at page 377 by considerable discussion of the responsibility of a railroad company to rescue an employee

who has fallen from his locomotive as against the liability of the shipowner to rescue a sailor who has fallen into the sea. It is submitted that the holding of *New York Central R. R. Co.* v. *Chisholm, supra,* is not impaired, but is rather reinforced, in *Cortes* v. *Baltimore Insular Line, supra,* since the *New York Central* case involved a question of the applicability of a United States statute extraterritorially, whereas the *Cortes* case hinged rather upon what acts or failures to act constituted negligence towards an employee by a shipowner as compared with a railroad company, and involved no question of the locus of the act and its relation to the remedy sought. As a matter of fact, the *Cortes* decision required no jurisdictional discussion, involving, as it did, a tort committed aboard an American vessel (52 F. 2d 22) on a coastwise voyage (287 U. S. 370).

It is submitted that based on the decision in *New York Central R. R. Co.* v. *Chisholm, supra,* the question of whether the acts of a shipowner constitute negligence is not to be decided by extraterritorial application of the Jones Act when the alleged liability is incurred abroad, and that the decision in *Cortes* v. *Baltimore Insular Line, supra,* has the same effect.

The liability of the petitioner to the plaintiff for the injuries sustained aboard the petitioner's vessel, while that vessel was in Havana, Cuba, should, therefore, be governed by the Danish law, the law of the flag.

POINT III

Matters affecting only the internal economy and discipline of the vessel, arising between a foreign owner and a foreign seaman beyond the continental limits of the United States, should be governed by the law of the flag in accordance with accepted tradition and custom.

This action is one by a Danish seaman against the Danish owners of a Danish ship for injuries sustained aboard that Danish ship while moored in Havana, Cuba.

Larsen had signed articles in New York on the Danish form (Defendant's Exhibit A, 44, 45), calling for a voyage to "South America and further" (pre-trial order, 16). As shown in the statement of facts, Larsen recovered from the Danish shipowner all the benefits to which he was entitled by the terms of the articles which he signed. These benefits consisted of all necessary hospitalization expenses in Havana (pre-trial order, 16, 35, 49), free transportation from Havana to New York (pre-trial order, 16, 37), free hospitalization at the United States Marine Hospital on Ellis Island (pre-trial order, 16, 37, 49), free out-patient treatment at the Long Island College Hospital (pre-trial order, 16, 39, 49), maintenance and subsistence from December 10, 1946, the date he was discharged from the United States Marine Hospital at Ellis Island, until December 30, 1946 (90).

During the course of Larsen's treatment in New York, the petitioner offered him free transportation to Denmark for such further treatment as might be necessary, but this offer was refused by Larsen (50). In addition to the above benefits, Larsen received all wages due him up to the date of the accident (pre-trial order, 16, 39), and also received the seven days' wages to which he was entitled under the Danish Maritime Law (39-40, Defendant's Exhibit D, 90-92).

That Larsen was entitled to and accepted all these benefits is significant, in that he had chosen to bind himself by the terms of the articles which he signed as long as they would benefit him, but is now seeking, in addition, to go outside the terms of these articles in order to recover from the Danish shipowner under the Jones Act.

As has been pointed out under the Statement of Facts in the petition, the articles stated that each crew member, including Larsen, was employed in accordance with and subject to the provisions set forth in the Danish Seamen's Act (Def. Ex. A, 44, 45), and since Larsen was fully able to read Danish (46), there can be no question raised as to his understanding of the conditions of his employment.

It is submitted that on the facts of the case the liability of the petitioner, the Danish employer, to the employee, the Danish seaman, should be governed by the Danish law, the law of the flag, since a matter arising between a Danish shipowner and a Danish seaman, in a foreign port aboard a Danish ship, is purely a matter relating to the internal economy or discipline of that vessel and should be governed by the law of the flag, that is, the Danish law.

The criterion to be used in determining whether to apply the law of the port or the law of the flag with respect to events occurring aboard a foreign vessel was enunciated by the Supreme Court of the United States in 1887 in *Wildenhus's Case*, 120 U. S. 1, 7 S. Ct. 385, 30 L. Ed. 565. This involved the question of jurisdiction over an altercation between two Belgian seamen aboard a Belgian vessel, moored in Jersey City, New Jersey. As a result of the affray, one of the Belgians sustained a mortal wound, from which he afterwards died. Mr. Chief Justice Waite delivered the opinion of the Court and pointed out that under the law of civilized nations a merchant vessel of one country entering the port of another for the purposes of trade, normally subjected itself to the law of the place where it went, so that it owed temporary and local allegiance to the jurisdiction of the country. As to this general principle, however, he was careful to draw a distinction between internal discipline, rights and duties of the crew towards the vessel, all of which, he said, should be governed by the law of the flag, and, on the other hand, those matters which would affect the peace or dignity of the port, and drew this distinction in the following language (at page 12):

> "From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all

> things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require. But if crimes are committed on board of a character to disturb the peace and tranquillity of the country to which the vessel has been brought, the offenders have never by comity or usage been entitled to any exemption from the operation of the local laws for their punishment, if the local tribunals see fit to assert their authority.

This same principle was again enunciated by this Court in *United States* v. *Rodgers,* 150 U. S. 249, 14 S. Ct. 109, 37 L. Ed. 1071 (1893). Here it was held in an opinion by Mr. Justice Field that the courts of the United States had jurisdiction to try a person for an assault with a dangerous weapon, committed on a vessel belonging to a United States citizen, when that vessel was in the Detroit River, outside the jurisdiction of any particular state, but within the territorial limits of the Dominion of Canada. In so holding, Mr. Justice Field pointed out that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another nation, was not necessarily wholly exclusive, but in defining the limits of the exemption from local law, he wrote as follows (at page 265):

> "But, nevertheless, the law of nations, as I have stated it, and the statutes of governments founded on that law, as I have referred to them, show that enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships not only over the high seas, but into ports and harbors, or wheresoever else they may be water-borne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof, and that, to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation herself."

The principle above set forth was further subscribed to by Mr. Justice Brewer in delivering the opinion of this Court in *Patterson* v. *Bark Eudora, supra.*

Application of the principle to a United States vessel in foreign waters can be found in *Thompson Towing & Wrecking Association* v. *McGregor,* 207 F. 209 (6th Cir., 1913). This was an appeal from a decree entered in a proceeding to limit liability respecting a boiler explosion on the lighter Stewart, which resulted in the instant death of Workman on board the vessel and in permanent injury to McGregor, both of whom were members of her crew. The explosion occurred in an arm or bay of Lake Huron in Canadian waters. McGregor and the administratrix of Workman commenced separate suits in the County Court of Michigan to recover damages for the permanent injuries and death mentioned. With respect to the question of the application of Michigan or Canadian law, Judge Warrington wrote as follows (at page 215):

> "Concededly the state suit was begun within the time fixed by the Michigan death statute. Can the right of action in terms preserved to the widow by that statute be enforced? If so, it is because at the time of the death the Stewart was through ownership and registration domiciled in Michigan and was, as respects the enforcement of such a right, part of the territory of Michigan. So far as this question is concerned, the ultimate basis of the decree was 'that the explosion of this boiler was a matter which did not directly involve the "peace, dignity, or tranquility" of the Canadian government, but rather involved the "internal discipline and management" of the ship.'"

In holding that the liability of the vessel for the death and injury was governed by the Michigan law, the Court subscribed to the language in *United States* v. *Rodgers, supra,* when Mr. Justice Field wrote as follows (at page 260):

> "The general rule is that the country to which the vessel belongs will exercise jurisdiction over all mat-

ters affecting the vessel or those belonging to her, without interference of the local government, unless they involve its peace, dignity, or tranquillity, in which case it may assert its authority."

A similar situation is found in *Grand Trunk Ry. Co.* v. *Wright,* 21 F. (2d) 814 (6th Cir., 1927), aff'd 278 U. S. 577, 73 L. Ed. 516, 49 S. Ct. 176. This involved an injury resulting in death, suffered by an employee on board a train ferry in American territorial waters, the ferry being of American registry, but having been chartered to defendant railroad, a Canadian corporation. The Court declared that the liability asserted rested upon the relationship of master and servant between a Canadian corporation and a Canadian resident, and was to be performed under the supervision of the defendent's corporate officers in Canada or in international adjacent waters. The Court held that the negligence involved was incidental to the internal discipline and management of the boat and that the Canadian Death Act was applicable rather than the Michigan Death Act or the Federal Employers' Liability Act, even though the act of negligence had taken place in United States waters.

It is submitted that the liability of the petitioner towards Larsen for the accident occurring aboard the Danish vessel S.S. Randa while in the port of Havana, Cuba, related only to the "internal economy and discipline" of the vessel, and for that reason should be governed by the law of the flag and should not call for the extraterritorial application of the statutes of the United States just because the articles signed by Larsen were entered into in New York. The only connection between the United States and the facts of this case is that Larsen was temporarily in New York at the time he signed aboard the vessel. That this fortuitous circumstance should entitle him to proceed in the United States Courts to recover from the Danish shipowner for an injury in Havana, Cuba, is to stretch extraterritorial application of our statutes to the breaking point.

Support for the contention that the "law of the flag" doctrine is still very much alive, can be found in *Kyriakos* v. *Goulandris, supra,* and *Taylor* v. *Atlantic Maritime Co., supra,* the very two cases relied upon by the Court of Appeals for the Second Circuit in affirming the judgment of the Trial Court herein. In *Kyriakos* v. *Goulandris, supra,* Kyriakos, a Greek seaman who signed on a Greek vessel then in the United States, for a voyage to England and return, sought recovery for injuries sustained while the vessel was in the port of Fernandina, Florida. In the majority decision, Judge Augustus Hand set forth the rule as follows (at page 138):

> "It is true that in the absence of any statute, liability for a tort committed on board a vessel while the vessel is in the territorial waters of a state is determined, if it affects only the internal economy or discipline of the vessel, by the law of the state whose flag the vessel flies. American Law Institute Conflict of Laws § 405."

That this was the accepted rule in the Second Circuit as to matters relating to the internal economy or discipline of the vessel, finds further support in the dissenting opinion of Judge Learned Hand, when he stated at the beginning of his opinion (at page 139):

> "As my brothers agree, it is generally accepted law that in all matters relating to 'the internal economy or discipline' of a ship 'the law of the flag' controls. I have gathered in the margin * a number of decisions which invoke this principle in varying applications; nobody disputes it; and it seems to me most unde-

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* "*The Scotland,* 105 U. S. 24, 26 L. Ed. 1001; *The Belgenland,* 114 U. S. 355, 5 S. Ct. 860, 29 L. Ed. 152; *United States* v. *Rodgers,* 150 U. S. 249, 14 S. Ct. 109, 37 L. Ed. 1071; *Cunard S.S. Co.* v. *Mellon,* 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306; *Thompson Towing & Wrecking Association* v. *McGregor,* 6 Cir., 207 F. 209, 217-219; *Rainey* v. *New York & P. S.S. Co.,* 9 Cir., 216 F. 449, 454, L. R. A. 1916A, 1149; *The Hanna Nielsen,* 2 Cir., 273 F. 171; *Grand Trunk R. Co.* v. *Wright,* 6 Cir., 21 F. (2d) 814; *Cain* v. *Alpha S.S. Corp.,* 2 Cir., 35 F. (2d) 717."

sirable, except for some pressing reason of domestic policy, to disregard it. It is a hardship to owners, and it may be to seamen, to have their legal relations depend upon the accident of the port of call at which the ship puts in; it is impossible to adjust affairs to constantly shifting standards, some of which will favor one party, some, another. Moreover—and this, I think, we should treat most seriously—it must often be irritating to the state of the flag for the state of a port of call to insist that its own notions of what is just between owner and crew shall supersede those satisfactory to the first state."

In *Taylor* v. *Atlantic Maritime Co., supra,* Taylor, a Panamanian citizen, sought to recover for aggravation of tuberculosis from the Panamanian shipowner, Taylor having signed articles in Norfolk, Virginia. Judge Learned Hand delivered the opinion of the Court and set forth the rule in the following terms (page 598):

"Under the ordinary convention, if a seaman is injured on the high seas, his rights are the same as though he had been injured within the country of the ship's flag;[7] unless the owner be American.[8]"

As to the use of the terms "It is true that in the absence of any statute," in *Kyriakos* v. *Goulandris, supra,* and "Under the ordinary convention," in *Taylor* v. *Atlantic Maritime Co., supra,* it has been indicated above under Point I that Section 33 of the Merchant Marine Act of 1920, known as the Jones Act, does not make the provisions of that section applicable to foreign seamen serving aboard foreign ships who are injured outside United States waters.

In *Sonnesen* v. *Panama Transport Co., supra,* Sonnesen, a Danish seaman, sought to recover under the Jones Act from the Panamanian owner for aggravation of tubercu-

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[7] "*The Hamilton,* 207 U. S. 398, 28 S. Ct. 133, 52 L. Ed. 264; *Cunard S.S. Co.* v. *Mellon,* 262 U. S. 100, 123, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306."

[8] "*Gerradin* v. *United Fruit Co.,* 2 Cir., 60 F. 927."

losis based on the fact that he had signed articles in New York. In denying the plaintiff recovery under the Jones Act, Judge Desmond, in a unanimous opinion, wrote as follows (p. 267):

> "The general rule of maritime law is that tort liability on the high seas is determined by the law of the flag (*O'Neill* v. *Cunard White Star*, 160 F. 2d 446; see *Resigno* v. *Jarka Co.*, 248 N. Y. 225, 230; Robinson on Admiralty, pp. 238-239), which, in this case, is the law of Panama."

The opinion of Judge Learned Hand in *O'Neill* v. *Cunard White Star, Ltd., supra*, is extremely significant on this point. It should be noted again that Judge Learned Hand wrote this opinion after he had been overruled by the majority in *Kyriakos* v. *Goulandris, supra*, but before he wrote the opinion in *Taylor* v. *Atlantic Maritime Co., supra*. In this case the Court denied Jones Act relief to the administratrix of a British seaman injured on the high seas, the seaman having signed articles in Britain to serve aboard a British vessel—this, even though the deceased had been a long-time resident of the United States. Judge Learned Hand discussed the holdings of the prior cases (including the *Kyriakos* case) in the same Court on the question of the application of the Jones Act to foreign seamen serving aboard foreign vessels and wrote as follows (at page 448):

> "* * * The three decisions we have mentioned do not help us to decide whether we should now hold that the Jones Act interposes to change what would otherwise be the rights and duties of the parties, because *in all three the act or omission was within our waters.* In each the question was whether an act of Congress, at least literally applicable to the situation, should yield to the doctrine that so far as concerns the 'internal economy' of a foreign ship, the law of the flag applies while she is in a foreign port * * *. In the case at bar the situation is just reversed: we are to say, not when the Jones Act should give place to the

law of the flag, but *when the law of the flag should give place to the Jones Act in places where the Jones Act does not expressly apply* * * *." (Emphasis supplied.)

After writing this opinion in *O'Neill* v. *Cunard White Star Line, Ltd., supra,* in which he held that there was nothing in the language of the Jones Act to indicate that it was to be applied to injuries occurring on the high seas, Judge Learned Hand followed, in 1950, with the opinion in *Taylor* v. *Atlantic Maritime Co., supra.* In discussing, in the latter case, the law of the flag, the Jones Act and foreign seamen, Judge Learned Hand wrote as follows (at page 598):

> "When a seaman signs articles in a foreign port for service on an American ship, and is injured on the high seas, there is no embarrassment, whether one regards the claim as sounding in tort, or in contract. So far as it sounds in tort, it depends upon American law—the law of the flag—; so far as it sounds in contract, although the law of the place where the contract is made will ordinarily apply, it is a well-recognized exception that in all that concerns the 'internal economy' of the ship the law of the flag controls.[9]"

Judge Hand has stated, in effect, that the seaman who signed on an American vessel in a foreign port will be governed by the law of the flag if his claim sounds in tort, and that if his claim sounds in contract, an exception to the law of the place where the contract was made will still cause the law of the flag—that is, American law—to apply. Logically, it should follow, if the same rule were applied to a foreign seaman signing on a foreign ship in a United

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[9] "*The Scotland*, 105 U. S. 24, 26 L. Ed. 1001; *The Belgenland*, 114 U. S. 355, 5 S. Ct. 860, 29 L. Ed. 152; *United States* v. *Rodgers*, 150 U. S. 249, 14 S. Ct. 109, 37 L. Ed. 1071; *Cunard S.S. Co.* v. *Mellon*, 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306; *Thompson Towing & Wrecking Ass'n* v. *McGregor*, 6 Cir., 207 F. 209; *Rainey* v. *New York & P. S.S. Co.*, 9 Cir., 216 F. 449, L. R. A. 1916A, 1149; *The Hanna Nielsen*, 2 Cir., 273 F. 171; *Grand Trunk R. Co.* v. *Wright*, 6 Cir., 21 F. 2d 814; *Cain* v. *Alpha S.S. Corp.*, 2 Cir., 35 F. 2d 717."

States port, that if the claim sounds in tort, the law of the foreign flag will apply, and if the claim sounds in contract, that same exception to the law of contract should apply and the law of the flag—the foreign law—should be applied to that claim.

That is the substance of petitioner's argument—i.e., that as to matters within the "internal economy" of the vessel, the law of the flag and the law of the place of the injury predominate over the law of the place where the hiring contract was made.

POINT IV

The facts in this case are not governed by the decisions of the Court of Appeals for the Second Circuit in *Kyriakos* v. *Goulandris* or *Taylor* v. *Atlantic Maritime Co.*

This action is one by a Danish seaman against the Danish owners of a Danish vessel to recover damages for injuries sustained aboard the Danish vessel while in the port of Havana, Cuba. The Danish seaman signed articles on the Danish form in New York for a voyage to South America and further. After the injury the Danish seaman, Larsen, recovered all the benefits to which he was entitled under the terms of the articles which he had signed and under the terms of the Danish law. Defendant's motions made at the end of the plaintiff's case, at the end of the defendant's case and after the jury verdict, to dismiss the complaint for lack of jurisdiction, were all denied by the Trial Court. These motions were made on the grounds that this was an action between citizens of Denmark and, therefore, outside the jurisdiction of the Court. In addition, the Trial Court denied defendant's request to charge that the jury must find for the defendant if it found that the defendant had fulfilled its obligations under the Danish law, and the Court charged the jury that the Danish law had no application to

the case. From this charge the defendant excepted. On appeal to the United States Court of Appeals for the Second Circuit, the judgment of the Trial Court was affirmed on the authority of *Kyriakos* v. *Goulandris, supra,* and *Taylor* v. *Atlantic Maritime Co., supra.*

It is submitted that the facts in this case are such that they are not governed by the decisions in *Kyriakos* v. *Goulandris, supra,* and *Taylor* v. *Atlantic Maritime Co., supra,* but that the essential facts of the instant case are such as to require an independent ruling as to the applicability or the nonapplicability of the Jones Act.

Before examining the opinions of the United States Court of Appeals for the Second Circuit in the *Kyriakos* and *Taylor* cases, it would be well to survey briefly the earlier decision in order to determine what factors the courts have considered determinative of the application of the Jones Act to foreign seamen and to foreign vessels.

In 1937 in *The Paula,* 91 F. (2d) 1001, 1937 A. M. C. 988, cert. den. 302 U. S. 750, 58 S. Ct. 270, the United States Court of Appeals for the Second Circuit affirmed the District Court decree dismissing the libel and declining to exercise jurisdiction in a case involving a German seaman who had signed articles in Chile to serve on a Danish ship on a voyage to Brooklyn, New York. While the vessel was at the intermediate port of Jacksonville, Florida, the libelant was injured during the performance of his duties on board the ship. The District Court declined jurisdiction and relegated the seaman to his claim under Danish law before the Danish Consul. In disposing of libelant's claim that the District Court had jurisdiction under Section 33 of the Merchant Marine Act of 1920, Judge Swan wrote (pp. 1003, 1004):

> "The libelant claims not only under the maritime law but also under section 33 of the Jones Act (46 U. S. C. A. § 688). He asks us to rule that this applies to an alien seaman on a foreign ship who signed on at a foreign port, if he sustains injury in a port of the United States through the negligence of a fellow sea-

man. This question was expressly left open in Plamals v. Pinar Del Rio, 277 U. S. 151, 155, 48 S. Ct. 457, 72 L. Ed. 827. Precise authority on it is meager. Such as there is has answered the question in the negative. The Seirstad, 27 F. (2d) 982 (D. C. E. D. N. Y.); The Magdapur, 3 F. Supp. 971 (D. C. S. D. N. Y.). * * * We think the intention to legislate for alien seamen who have signed articles abroad on a foreign ship ought to be clearly expressed before the courts extend the statute to them."

With respect to the libelant's recovery under the Danish law, the opinion reads as follows (at page 1003):

"It is not disputed that the Danish law gives the libelant a right to medical expenses for a limited period (which the respondent has already satisfied) and a right to compensation for injuries from a governmental insurance fund, out of which payment may be obtained in the United States by presentation of a claim to the Danish Consul. These rights are substitutes for maintenance and cure and the right to indemnity recognized by the general maritime law; and the substituted remedy is available in New York where the alien and his witnesses are present; hence no injustice results from leaving him to that remedy."

In 1942, in *Gambera* v. *Bergoty*, 132 F. (2d) 414, 1943 A. M. C. 45, cert. den. 319 U. S. 742, 63 S. Ct. 1030, 87 L. Ed. 1699, the United States Court of Appeals for the Second Circuit modified the doctrine of *The Paula* to the extent that relief under the Jones Act was granted to an Italian seaman injured on board a Greek ship in territorial waters of the United States. In denying the respondent's motion to dismiss the libel in the District Court for the Southern District of New York, Judge Coxe commented on the facts in the following terms (39 F. Supp. 871):

"The affidavits submitted on behalf of the libelant show that he is an Italian, who has resided since 1920 in the United States. He served in the United States Army in 1927 and 1928, receiving an honorable discharge on March 12, 1928, and in 1937 filed his first

> papers for naturalization as a United States citizen. He was hired by the captain of the S.S. Emmy at Trenton on December 21, 1939, for a voyage to Philadelphia and Norfolk, and thence to New York, where he was to be discharged. The injury took place on December 23, 1939, as the vessel was proceeding from Trenton to Philadelphia. * * * He has never been in Greece, does not speak the language, the witnesses are here, and it would be a clear denial of justice if he were required to go to Greece to litigate his claim."

That the United States Court of Appeals for the Second Circuit, in affirming the denial of respondent's motion to dismiss, considered that the locus of the voyage and the citizenship status of the libelant were significant, is shown by the language of Judge Learned Hand (132 F. (2d) 415):

> "Not only had the libelant been domiciled in the United States for over twenty years, during the greater part of which he had served on American ships, but the voyage began and ended in the United States; it was from Trenton to Philadelphia, Norfolk and New York, and he was injured on the leg between Trenton and Philadelphia. The whole voyage was thus to be performed within our territorial waters except possibly for a part of the leg between Norfolk and New York. *That presents a wholly different situation from any that have hitherto arisen.*" (Emphasis supplied.)

Judge Learned Hand held that Gambera's libel stated a good claim *in personam* which should be tried on the merits.

The doctrine of *The Paula*, therefore, was only modified to the extent that relief was granted because of the pseudo-United States citizenship of the libelant and because the voyage began and ended within the territorial limits of the United States, and that the injury occurred within the limits of that voyage within United States waters.

Even after this decision in *Gambera* v. *Bergoty, supra*, it had never yet been held that the terms of the Jones Act were applicable to an injury sustained by a bona fide alien serving aboard a foreign vessel, quite irrespective of the place of the injury.

The first deviation from this principle and from the accepted interpretation of the intended application of the Jones Act occurred in the decision of the United States Court of Appeals for the Second Circuit in *Kyriakos* v. *Goulandris, supra,* in 1945. But even in that case, as will be pointed out, the facts were not such as to govern the determination of the case at hand.

Kyriakos, a citizen of Greece, was employed as a fireman aboard the S.S. Theomitor, and sued to recover for injuries sustained as a result of an assault by a fellow seaman in April, 1942, in Fernandina, Florida. He asserted causes of action for cure, maintenance and wages to the end of the voyage, and, under the Jones Act, for damages arising from the negligence of the respondents, their servants and employees. The articles signed by Kyriakos in New York City in March, 1941, called for a voyage from Newport News to England and back to the United States. Kyriakos was engaged along with several others at the office of the Greek Line in New York, pursuant to orders received from the captain of the vessel. The Greek Line paid the expenses of his transportation to Newport News, where he joined the ship. The Trial Court, in an opinion by Judge Bondy, awarded Kyriakos the sum of $17,500 as damages, holding that Kyriakos was entitled to maintain his action under the Jones Act. The reasons for this decision are set forth in the opinion of Judge Bondy (63 F. Supp. 19, 20):

> "The libellant is a citizen of Greece. He was assaulted at Fernandina, Florida, by a fellow seaman while serving as a fireman on the *Theomitor,* a vessel flying the flag of Greece and owned in Greece by the respondent Michael Polemis.
>
> The libellant was hired for a voyage from Newport News, Virginia to England and back to the United States.
>
> The fact that the libellant was an alien seaman serving upon a foreign ship owned and operated by aliens does not deprive him of the right to maintain this action under the Jones Act, in view of the fact that he resided in the United States, that he was in-

jured within territorial waters of the United States while in the service of the ship on a voyage that began and was to end in the United States. *Gambera* v. *Bergoty*, 2 Cir., 132 F. (2d) 414, certiorari denied 319 U. S. 742, 63 S. Ct., 1030, 87 L. Ed. 1699; See *Uravic* v. *Jarka Co.*, 282 U. S. 234, 239, 1931 A. M. C. 239; Compare *The Paula*, 2 Cir., 91 F. (2d) 1001."

Subsequently, the respondents appealed from the judgment of the trial court to the United States Court of Appeals for the Second Circuit. On the appeal it was contended by the appellants that Kyriakos could not sue under the Jones Act, because it gave no remedy to an alien employed on a foreign ship. The Court of Appeals for the Second Circuit, in an opinion by Judge Augustus Hand, could find nothing in the record to support the statement of Judge Bondy that the libelant was a resident of the United States, since Kyriakos had testified that he had come to this country as a seaman and had signed off the vessel which had brought him to the United States because it was undergoing repairs. On this point, Judge Augustus Hand wrote as follows (151 F. (2d) 136):

"He had been here for an unspecified period, which was certainly less than three months, when he signed on the *Theomitor*. His stay in this country since his injuries were sustained is not sufficient, under all the circumstances, to show that he had acquired a residence in the United States when he signed on which would give him a right of action under the Jones Act. *Gambera* v. *Bergoty*, 2 Cir., 132 F. (2d) 414, certiorari denied 319 U. S. 742, 63 S. Ct. 1030, 87 L. Ed. 1699."

After conceding in this manner that the facts of the case were not such as to fall under the holding in *Gambera* v. *Bergoty, supra*, Judge Augustus Hand framed the question presented to the Court in the following terms (at p. 136):

"We are thus called upon to determine whether an alien seaman who signed on in an American port for a voyage beginning and ending in American waters can sue under the Jones Act."

The opinion of the Court then followed with a reference to *Strathearn S.S. Co.* v. *Dillon, supra,* which has been fully discussed in this brief under Point II. The majority concluded, on the authority of *Patterson* v. *Bark Eudora, supra,* and *Strathearn S.S. Co.* v. *Dillon, supra,* that Congress undoubtedly had authority to make a statute such as the Jones Act applicable to foreign vessels in our ports.

Then, in answer to the question posed as to what the Court was called upon to determine, Judge Augustus Hand wrote as follows (at p. 137):

> "In the instant case the libelant signed on in an American port *and he was injured in an American port.* We think this is sufficient both on reason and on authority. The intention of Congress to benefit American seamen would not be served by a contrary construction of the statute, since it would tend to encourage the hiring of foreign seamen *in American ports* in preference to American seamen because the aliens would not have the right of suit against their employers *if injury should occur in those ports,* while American seamen would." (Emphasis supplied.)

The discrepancy between the framing of the question presented to the Court, as set forth on page 136, and the answer, as set forth on page 137 of the opinion in 151 F. (2d), should be noted. The opinion states that the Court was called upon to determine whether an alien seaman who signed on in an American port for a voyage beginning and ending in American waters could sue under the Jones Act. But the answer, as set forth on page 137, makes much of the fact that the injury itself took place in an American port.

There is nothing in the opinion of the majority to indicate that the holding would have been the same had Kyriakos been injured either on the high seas or in a foreign port.

The differences in the essential facts of the *Kyriakos* case and the instant case are numerous.

Firstly, it should be noted that Kyriakos signed articles for a voyage from a United States port to England and then back to the United States. Larsen, however, signed articles in a United States port, calling for a voyage to South American ports and further and binding Larsen to serve aboard the vessel for an indefinite period, while at the same time granting him the right to give seven days' notice of his intention to leave the vessel. Nothing in the articles signed by Larsen indicated that the vessel was to return to the United States or that the owner was under any obligation whatsoever to return him to the United States for discharge in this country.

Secondly, Kyriakos was injured ashore in Fernandina, Florida, when he was assaulted by a fellow crew me[illegible] who had also been signed on at the same time as Ky[illegible] Larsen, on the other hand, was injured aboard the [illegible] vessel, S.S. Randa, while that vessel was moored in Hava[illegible] Cuba. The opinion of Judge Augustus Hand in *Kyriakos* v. *Goulandris, supra,* indicates clearly that the majority was greatly swayed by the fact that the injury to Kyriakos had occurred in a United States port.

Thirdly, there is nothing in the opinions in the *Kyriakos* case to indicate that Kyriakos received any benefits or obtained any recovery under the Greek law, that is, the law of the flag. As a matter of fact, at the time of the injury, Greece itself was in the hands of the German occupation forces, having been so since 1941, and whatever Greek government was in power at the time was, at best, a government in exile with no authority within its own country. Larsen, however, proceeded to recover and did, in fact, recover all the benefits to which he was entitled under the terms of the Danish seamen's law and under the terms and conditions of the articles which he had signed on the Danish form. In addition, as has been pointed out under the Statement of Facts, there were available to Larsen additional medical benefits, if such had been required, in Denmark, but Larsen refused the offer of repatriation.

Repatriation in the case of Kyriakos was obviously impossible. In short, Kyriakos had no remedy available to him other than under the United States law.

The chasm existing between the instant case and *Kyriakos v. Goulandris, supra,* is clearly supported by the opinion of Judge Learned Hand in *O'Neill* v. *Cunard White Star, Ltd., supra.* As has been pointed out under Points I and II of this brief, the United States Court of Appeals for the Second Circuit, in an opinion by Judge Learned Hand, stated that the provisions of the Jones Act did not appear to be applicable to an injury sustained on the high seas. In deciding whether the Jones Act was applicable to a British seaman injured on the high seas aboard a British vessel, the opinion discussed the cases of *The Paula, supra, Gambera* v. *Bergoty, supra,* and *Kyriakos* v. *Goulandris, supra,* and with respect to these three cases wrote as follows (160 F. (2d) 448):

> "The three decisions we have mentioned do not help us to decide whether we should now hold that the Jones Act interposes to change what would otherwise be the rights and duties of the parties, because in all three the act or omission was within our waters."

The very same argument must be applied here, for Kyriakos was injured in a United States port, whereas Larsen was injured aboard the vessel in a foreign port, and if the *Kyriakos* case did not help the Court decide the *O'Neill* case, it most certainly cannot be cited as authority for the instant one.

The latest ruling on this question and the second case relied upon by the United States Court of Appeals for the Second Circuit in affirming the judgment of the Trial Court in the instant matter is *Taylor* v. *Atlantic Maritime Co., supra.*

The decision of Judge Hulbert in the United States District Court for the Southern District of New York on defendants' motion to decline jurisdiction is reported at 86 F. Supp. 496, 1949 A. M. C. 1192, and indicates that Taylor

signed articles at Norfolk, Virginia, on August 7, 1947, as an able-bodied seaman, and continued in the employ of the defendants on the vessel S.S. Atlantic Air until November, 1948. The complaint alleged that in March, 1948, Taylor became very sick "through no fault of his own, but entirely through the fault of the defendants, their agents, servants and employees, in failing to furnish him with a safe place in which to work, and to provide him with a safe and seaworthy vessel." It was also alleged in the complaint that the plaintiff was a resident of the City of New York, of Panamanian nationality, and that the defendant Atlantic Maritime Company was a Panamanian corporation, existing under and by virtue of the laws of Panama, doing business through its agent, S. Livanos & Co., with an office in the City of New York. In the course of the opinion, Judge Hulbert pointed out that there was nothing in the moving papers to indicate where the vessel went after leaving Norfolk, Virginia, except to indicate that in August of 1948 the vessel was in Sydney, Australia. Judge Hulbert granted the motion, and wrote as follows (at p. 498):

> "The Jones Act does not afford protection to 'a seaman of foreign residence and nationality suing a non-American ship owner for an alleged tort committed on a non-American ship on the high seas.' *Sonnesen* v. *Panama Transport Co.*, 298 N. Y. 262, 82 N. E. 2d 569, 570; cf. also *O'Neill* v. *Cunard White Star, Ltd.*, 2 Cir., 1947 A. M. C. 505, 160 F. (2d) 446. The General Maritime Law of the United States is also not applicable to the facts of this case, but rather under familiar principles the law of the flag, viz. Panama, is the law that must be applied. Under these circumstances, this Court should not entertain jurisdiction of this action, but should relegate plaintiff to the appropriate forum in Panama."

Thereafter the plaintiff appealed from this judgment dismissing his complaint, but died before the decision of the United States Court of Appeals for the Second Circuit. The opinion of the Court of Appeals was written by Judge

Learned Hand, who had written the very strong dissent to the *Kyriakos* case and who, in the *O'Neill* case, had held that the provisions of the Jones Act were not intended by Congress to be applicable to injuries sustained on the high seas or in a foreign port. The eventual holding of the Court was that the Jones Act was applicable to the recovery sought by the Panamanian seaman against the owners of the Panamanian vessel for the latter's failure to provide proper care and attention aboard the vessel, all of which allegedly led to aggravation of the plaintiff's tubercular condition; the plaintiff having signed articles in Norfolk, Virginia.

Such a short summary, however, of the holding of the Court can in no way convey the sense of reluctance which pervades the entire opinion. In order to convey properly this sense of reluctance, it would be necessary to quote the entire opinion at length, but suffice it to say for the moment that the opinion contains many more arguments for not applying the Jones Act than for reaching the conclusion which the Court eventually did.

Judge Learned Hand outlined the negative arguments and, from all appearances, seemed to support these negative arguments in the following terms (at p. 600):

> "Judge Clark thinks that, since the overriding purpose of the Jones Act is to protect seamen, it should be understood to include alien seamen and that the law of the flag must yield. Indeed, so far as concerns American seamen, we decided as much in Gambera v. Bergoty, supra; and it must be conceded that, if the doctrine there accepted does not extend to aliens who sign articles in an American port, American citizens may be at a disadvantage as against aliens in shipping foreign. To Judge Swan and me it seems, on the other hand, that, before we impute to Congress the will to change the long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose. We of course recognize that it is only a question of interpreting the statute, not of power; but the possible consequences of the innovation seem to us to forbid

its ready assumption under the facile phrase of the 'policy of the Act.' Nor does the possible disadvantage, at which our view might put American seamen, seem to us considerable enough to imply such a purpose, for there will be, we should suppose, only rare occasions when American seamen will find themselves forced to accept the greatly inferior standards of wages and living which prevail on most, if not all, foreign ships. Moreover, we both find strong support for our view in the decision of the Court of Appeals in Sonnesen v. Panama Transport Company, which is on all fours with the case at bar."

The above language which appears in the closing paragraph of the opinion clearly indicates that Judge Learned Hand, as well as Judge Swan, were unwilling to impute to Congress the will to change the long-settled international understanding that the law of the flag should control in such matters unless they could find a definite expression of that purpose.

Yet, there follows a conclusion which constitutes a complete reversal of the field, for instead of denying the applicability of the Jones Act, which the whole tenor of the opinion up to this point would indicate was the intention, Judge Learned Hand closed as follows (at page 600):

"*Nevertheless, in spite of what we should hold, were we free*, we think that, although Kyriakos v. Goulandris, supra, can be distinguished because the injury took place on shore, the rationale of the opinion went further; and that it construed the Jones Act as imposing its terms upon all owners who sign on crews in an American port. We do not think it fitting (especially in my own case) to distinguish that decision *by a circumstance which was not made pivotal;* but rather that we should accept and apply its doctrine as broadly as it seems to have been intended to go. Therefore, though for somewhat different reasons, we all agree that the judgment be reversed, and the action remanded for trial. Since the plaintiff died pending the appeal the suit must be revived under our Rule 9; but when that has been done, the judgment will be reversed." (Emphasis supplied.)

Referring to the earlier language of the opinion, we must conclude that the Court had found a definite expression of the purpose of Congress to change the long-settled international understanding that the law of the flag controlled in such matters. Where does the Court find this definite expression of the will of Congress? They find it, not in any language of the statute, not in any expression of Congress, but in their own decision in *Kyriakos* v. *Goulandris*, while at the same time admitting that the latter case could be distinguished on the grounds that the injury took place ashore.

How can the Court conclude that a decision holding that the Jones Act is applicable to the case of a foreign seaman who is injured in a United States port, constitutes a definite expression of Congress to change the long-settled understanding that the law of the flag controls in a matter involving an injury sustained by a foreign seaman aboard a foreign vessel while in a foreign port?

The closing sentences of the opinion quoted above make it abundantly clear that the Court considered itself bound by its own decision in *Kyriakos* v. *Goulandris*, with the result that it has held that the lone fact that the articles were signed by the foreign seaman in a United States port was sufficient to require the application of the Jones Act to a recovery by the foreign seaman against his employer, the foreign shipowner, for illness on the high seas. It should be noted that Judge Learned Hand said that he did not consider it fitting to distinguish *Kyriakos* v. *Goulandris* "by a circumstance which was not made pivotal," referring, no doubt, to the fact that Kyriakos was injured ashore in the United States in the course of a voyage which was to start and terminate in the United States. It is submitted that the fact that Kyriakos was injured in the United States during the course of a voyage starting and terminating in the United States was a definite factor in leading that same Court to hold that the Jones Act was applicable in that case, and finds ample support in the language of Judge Augustus Hand in the *Kyriakos* case, quoted earlier. That language

indicated that the whole decision in *Kyriakos* v. *Goulandris, supra,* was predicated on the three factors involving the United States, i.e., signing on in the United States, a voyage starting and terminating in the United States, and, finally, injury occurring within the United States. That Justice Learned Hand earlier considered these factors to have been "pivotal" is shown by the fact that in *O'Neill* v. *Cunard White Star, Ltd., supra,* he took pains to specifically point out that the *Kyriakos* case did not help him decide as to the applicability of the Jones Act to an injury sustained on the high seas, since the *Kyriakos* case involved an act of omission committed within United States waters. Why were these circumstances pivotal in 1947, but not in 1950?

But even if we were to concede for the purposes of argument that the decision of the United States Court of Appeals for the Second Circuit in *Taylor* v. *Atlantic Maritime Co., supra,* was correct, the differences in the essential facts of the *Taylor* case and the instant case are so numerous as to require a holding that the *Taylor* case is no more authority for a decision on this matter than was *Kyriakos* v. *Goulandris, supra.*

Taylor was a Panamanian national, and it was alleged in the complaint that he was a "resident of the City of New York, State of New York" (86 F. Supp. 496). Larsen, the plaintiff herein, was a Danish citizen and a resident of Denmark, who was temporarily in New York City at the time he signed articles to serve aboard the S.S. Randa (pre-trial order, 16, 44, Defendant's Exhibit A, 44, 45).

At the time Taylor served aboard the S.S. Atlantic Air, she was of Panamanian registry and was owned by Atlantic Maritime Company, a corporation registered in Panama. The history of the vessel, however, indicates that she was the S.S. Elizabeth Blackwell and, until 1947, was owned by the United States War Shipping Administration, having been built in California in 1943. Until 1947, Atlantic Maritime Company was not listed in Lloyd's Register of Shipping as a shipowner, but after that year Atlantic

Maritime Company was listed as a Panamanian shipowner, owning ten ships, all of them ships previously owned by the United States War Shipping Administration. Briefs filed on behalf of Taylor's administrator in this Court upon the petition of Atlantic Maritime Company for a writ of certiorari indicate that the true situs of the control and operation of this vessel flying the Panamanian flag was in the United States. Since Taylor's cause of action has never proceeded to trial, the exact nature of the operation and control of the S.S. Atlantic Air have not been brought out. There is nothing in the record and in the final judgment in this case to indicate that the S.S. Randa was not a legitimate Danish vessel flying the Danish flag, registered in Denmark, and owned and operated by the Danish petitioner (pre-trial order, 16).

The *Taylor* case was an action to recover for aggravation of tuberculosis caused by the alleged failure of the shipowner to give the seaman proper care on board the ship. By reason of the nature of the illness, and the length of service of the seaman aboard the vessel, however, there was no specific geographical spot where it could be said that the conduct of the shipowner rendered it liable to the plaintiff, for it must be assumed from what we know that the shipowner's failure to give proper care was a continuous failure extending over the entire period of time that the plaintiff was aboard the vessel. The only geographical spot having any tangible significance, therefore, was the place of sign-on, that is, Norfolk, Virginia. In the instant action the plaintiff-respondent has obtained a final judgment for a specific incident occurring aboard the owner's vessel while that vessel was moored in Havana, Cuba. Unlike the *Taylor* case, we can now point to specific conduct aboard the S.S. Randa in a specific foreign port where the shipowner incurred a possible tort liability, and there is no longer any need to refer to the port of sign-on in an effort to resolve the conflict of laws problem.

Although the opinion in the *Taylor* case does not specifically state that Taylor did not recover from the ship-

owner under the Panamanian law, the law of the flag, the entire tenor of the opinions make it clear that the plaintiff in that case had sought to recover solely under the terms of the Jones Act, and had evidently considered it not worthwhile proceeding under the terms of the Panamanian articles which he had signed. In the instant case, however, as shown in the Statement of Facts, Larsen recovered from the Danish shipowner all the benefits to which he was entitled under the terms of the articles which he had signed and under the provisions of the Danish Seamen's Law. The extent of these benefits has been set forth above. That Larsen accepted all of these benefits is significant in that he had chosen to bind himself by the terms of the articles which he signed as long as they would be of benefit to him, but later sought, in addition, to go outside the terms of these articles in order to recover from the Danish shipowner under the laws of the United States.

Lastly, what was involved in the *Taylor* case was a question of the contractual obligation of the shipowner to care for an ill seaman, whereas in the instant case the question involved is one of whether the tort liability of a fellow seaman of Larsen's is to be imputed to Larsen's Danish employer.

It is submitted, therefore, that the facts of and the law applicable to the instant case are not governed by the decision of the United States Court of Appeals for the Second Circuit in *Taylor* v. *Atlantic Maritime Co.*, *supra*.

There should be, therefore, a determination by this Court as to whether the Jones Act governs the liability of a foreign shipowner to a foreign seaman who signs on a foreign vessel in a United States port and is subsequently injured in a foreign port by reason of the negligence of a fellow seaman, when the injured seaman has recovered all the benefits to which he is entitled under the articles which he signed and under the laws of the country whose flag the vessel flies.

CONCLUSION

A writ of certiorari should be granted in accordance with the prayer of the petition. . . .

Dated, New York, N. Y., July 25, 1952.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner;

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

PETITIONER'S REPLY BRIEF

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN, Petitioner,

against

EVALD JOHANN LARSEN, Plaintiff-Respondent.

PETITIONER'S REPLY BRIEF

The plaintiff-respondent's brief is noteworthy for its avoidance of the point made by petitioner that the terms of the Jones Act were not intended to be applicable to a factual situation such as is presented here. It cites no authority and makes no argument to maintain its position that the facts involved were such as to require the Court to take jurisdiction and allow the plaintiff-respondent to maintain an action in our courts under the Jones Act rather than relegating him to a recovery under the Danish law, the law of the flag. Nor does his brief cite any authority to show that the Jones Act was specifically intended to cover injuries sustained abroad by a foreign seaman signing on a foreign ship in a United States port, or that it was intended to supplant the traditional law of the flag rule in such situations.

The Facts

1. The question presented in this petition has not, prior to this case, been presented either to this Court or directly to the Court of Appeals for the Second Circuit. Not only was the denial of a petition in *Taylor* v. *Atlantic Maritime Co.*, 179 F. (2d) 597, 1950 A. M. C. 352 (2 Cir., 1950), cert. den. 341 U. S. 915, 71 S. Ct. 736, not a review of the decision therein (plaintiff-respondent's brief 1), but the *Taylor* case dealt with the signing-on of an entire crew in an American port and with alleged continuing negligence (causation or aggravation of tuberculosis) which, under the doctrine of *Cortes* v. *Baltimore Insular Line*, 287 U. S. 367, 53 S. Ct. 173, 77 L. Ed. 368 (1932) commenced at the port of sign-on.

Furthermore, the denial of certiorari in the *Taylor* case, involving an interlocutory order such as would ordinarily not be appealable even in admiralty, since it did not finally determine the rights of the parties, is no authority in a situation such as presented here, where a final judgment was entered.

Finally, if denial of certiorari is in itself important, the denial of certiorari in the Supreme Court in *Sonnesen* v. *Panama Transport Co.*, 298 N. Y. 268, 82 N. E. (2d) 569 (1948), cert. den. 337 U. S. 919, 69 S. Ct. 1157, where the Court of Appeals of the State of New York held that foreign law was to be applied to a seaman signing on a foreign ship in the port of New York who was injured on the high seas rather than the Jones Act, is in point both to show that petitioner is correct and to point out that this is a situation where there has been a direct conflict of decisions on a federal question between a United States Court of Appeals (*Taylor* v. *Atlantic Maritime Co.*, *supra*) and the highest court of a state (*Sonnesen* v. *Panama Transport Co.*, *supra*). Petitioner urges that such a direct conflict exists. Counsel for plaintiff-respondent admits its existence and calls it an "obvious divergence" (p. 16). It is urged that the

divergence and conflict existing between the ruling of the United States Court of Appeals for the Second Circuit in the instant case, and the decision of the Court of Appeals of the State of New York warrants a review by this Court as the final arbiter of matters of federal law decided by either federal or state courts.

2. Respondent has deliberately misstated the record in saying that plaintiff-respondent signed articles to serve aboard the s/s Randa for a voyage from and to New York. The articles do not state this. The misstatement is further amplified by plaintiff-respondent's statement that the articles show that not one seaman signed off or on in Denmark (Defendant's Exhibit A, 44-45). Plaintiff-respondent's counsel did not notice that only a part of the articles are printed as may be seen by the fact that only pages 8 and 9 were reproduced (upper left and upper right hand corners of second page of Defendant's Exhibit A). Also, as shown in column 10 of pages 8 and 9 of Defendant's Exhibit A, while most crew members signed on for an indefinite period, one man on those pages reproduced signed on for a voyage only from Havana to the United States (Defendant's Exhibit A, column 10, 4 lines from bottom, 45). There is nothing in the record to indicate the extent of the voyage for which the respondent signed on beyond the terms of the articles which called for a voyage to "South America and other places" and the pre-trial order which stated that the plaintiff signed articles and shipped from the port of New York for a voyage to South America and other places (16). In addition, the plaintiff-respondent testified at page 47 that he was bound to serve aboard the vessel for an indefinite period of time with the right to leave the vessel on 7 days' notice. The Court's attention is called to the exchange between the Trial Judge and counsel for the plaintiff-respondent as recorded at pages 48 and 49 of the record, where the Trial Judge indicated that the wording of the pre-trial order did not deal with the "scope of the voyage", but merely stated the fact that the vessel finally got to New York.

The fact that two seamen listed on pages 8 and 9 of the Defendant's Exhibit A, who signed aboard the vessel in New York at the same time as Larsen, also signed off in New York 7 days after Larsen's injury in no way indicates that this was a voyage from and to New York. The terms of the articles signed by these two seamen made it possible for them to sign off the vessel merely by giving 7 days' notice of such intention to the master (Defendant's Exhibit A, 44, 45). Under such terms, therefore, any seaman could have signed off at *any port*, regardless of the port at which he signed on.

It seems strange to find this preoccupation on the part of counsel for the plaintiff-respondent on the question of the exact scope of the voyage involved, for counsel has stated repeatedly in plaintiff-respondent's brief that the pivotal point in determining whether the Jones Act is to apply or not is whether the place of sign-on was a United States port.

3. Foreign articles have never been held void by our courts. Petitioner cites no authority that articles such as were signed here are void (page 2 of plaintiff-respondent's brief), which is proof in itself that the policy of Congress and our courts has been that American statutes are not to be construed to apply to the internal affairs of foreign vessels.

4. In stating that plaintiff-respondent has received no benefits under the Danish law, counsel ignored plaintiff-respondent's testimony, Defendant's Exhibit D (91), and also Defendant's Exhibit C (20, 21, 89), which was a stipulation as to the terms of the Danish law signed by the attorney for plaintiff-respondent. The record will substantiate that plaintiff-respondent was duly cared for until he was able to return to work, all in accordance with the requirements of Danish law.

5. Counsel for the plaintiff-respondent has pointed out that no objection was made to the "propriety or jurisdiction of the service" of the summons and complaint herein (page

3). This is a novel point, since the petitioner does not question the Court's jurisdiction over the petitioner, but does question the jurisdiction of the Court over the plaintiff-respondent's cause of action under the Jones Act. The petitioner urges that the plaintiff-respondent is not entitled to the benefits under the Jones Act since he is a foreign seaman serving aboard a foreign vessel, but the petitioner has never sought to raise the point that initial jurisdiction over the petitioner itself was bad.

6. While it is true that the Trial Court ruled that the Danish law was not to be given effect (113, 114), it is not true that the jury found that there was no valid agreement to be bound by Danish law, for the Trial Court refused to permit this question to be placed before the jury and refused to permit the jury to consider any questions whatsoever involving the applicability or the effect of the Danish law (113, 114).

The Law

1. Plaintiff-respondent's argument that the Jones Act should be construed to apply to a foreign seaman signing on a foreign vessel while in an American port is apparently based on the argument that such a construction would indirectly subsidize the American Merchant Marine, and not that such a construction is necessary to comply with the terms of the Jones Act and insure justice in this action. Plaintiff-respondent was cared for by petitioner after his accident until he was ready to return to work, all in accordance with the Danish law, but counsel argues that plaintiff-respondent is entitled to still further benefits in accordance with American law in order to equalize operating conditions between American and foreign vessels (pages 4-6 plaintiff-respondent's brief). However, plaintiff-respondent ignores our national policy against indirect subsidy to shipping as shown by the Merchant Marine Act of 1936 (46 U. S. C. A., Sect. 1101), and the Congressional reports.

Prior to the passage of the Merchant Marine Act of 1936, Congress had provided aid to American shipping in the form of lending money at low rates of interest to the American shipping companies for the purpose of building new ships for foreign trade. Congress had, in addition, appropriated large annual sums under the guise of payments for ocean-mail contracts. Plaintiff-respondent now seeks to have the Court construe the Jones Act as applying to foreign seamen in order to give American shipowners an additional subsidy. However, President Roosevelt, in his Message to Congress on the Merchant Marine Act of 1936, dated March 4, 1935, in speaking of the difference between the ocean-mail payments actually made and the reasonable cost of such service, stated (74th Congress, House Document No. 118, p. 2):

> "The difference, $27,000,000, is a subsidy, and nothing but a subsidy. But given under this disguised form it is an unsatisfactory and not an honest way of providing the aid that Government ought to give to shipping.
>
> *I propose that we end this subterfuge.* If the Congress decides that it will maintain a reasonably adequate American Merchant Marine I believe that it can well afford honestly to call a subsidy by its right name." (Emphasis supplied.)

It is submitted, that for the Courts of the United States to attempt to reduce the burden of the United States taxpayer by subjecting foreign shipowners to higher insurance rates for personal injury coverage would be to resort to that very form of "subterfuge" which the Merchant Marine Act of 1936 was explicitly designed to avoid. The decisions of our Courts have no place within this province.

2. Reference to agents for foreign vessels in United States ports (plaintiff-respondent's brief, page 6) as a reason for applying all American statutes to internal affairs of foreign vessels, fully overlooks the point that American vessels trading to foreign ports use agents and subsidiary corporations in these foreign ports, without which operations would be impossible.

The question of local interference in domestic affairs of vessels engaged in international trade is a two-way street. If we are to concede that the internal affairs of a foreign vessel in a United States port are to be governed by United States law, then we must be prepared to admit that our vessels may also be subject to local interference at every foreign port of call.

The figures on United States vessels engaged in international trade, cited on page 5 of plaintiff-respondent's brief, are very significant since they show that the numbers and the tonnage of American vessels exceed those of foreign ships, so the overall picture indicates that an extension of the application of local laws would harm the American Merchant Marine more than the foreign merchant marine.

The foreign trade figures on page 5 also indicate the far reaching effect a decision on this point would have. They lend support to petitioner's contention that the issue and question presented to this Court by the petitioner is a substantial one which will have a profound effect upon a large number of shipowners engaged in trade to and from United States ports, and that it is an important federal question worthy of a decision by the Supreme Court of the United States.

3. The cases cited by counsel for the plaintiff-respondent under Point II on pages 7, 8 and 9 have been dealt with fully in the petitioner's brief in support of its petition, wherein it was pointed out that *Patterson* v. *Bark Eudora*, 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002 (1903), and *Strathearn S.S. Co.* v. *Dillon*, 252 U. S. 348, 40 S. Ct. 350, 64 L. Ed. 607 (1919), both involved the constitutionality of United States statutes which Congress had expressly specified should be applicable to foreign vessels. As was pointed out in that brief, these cases find no parallel in the instant one, since in the Jones Act and its legislative history we find no indication of an intent on the part of Congress to make its terms applicable to alien seamen aboard foreign vessels who are injured in foreign ports.

4. *The Titanic*, 233 U. S. 718, 34 S. Ct. 754, 58 L. Ed. 1171 (1913), cited on page 8 of plaintiff-respondent's brief, held only that a foreign shipowner who was sued in the United States was entitled to the benefits of the United States statutes limiting his liability, such statutes having been made *specifically applicable* by their terms to foreign, as well as American shipowners.

5. It is not contended on behalf of the petitioner that the law of the flag is a sacred doctrine superior to the law of our land in all instances, as is supposed by counsel for plaintiff-respondent (page 9). It is urged, however, that whenever there is a conflict between the law of the flag and the law of the forum, the determination of which shall be paramount hinges upon whether the matter involves the internal rights and duties of the crew towards the vessel, or whether it is a matter which so affects the peace and tranquillity of the port as to require the application of the law of that port. This distinction finds full support in the cases cited under Point III of the petitioner's brief in support of its petition.

6. *Stewart* v. *Pacific Navigation Co., Ltd.*, 3 F. 2d 329 (S. D. N. Y., 1924), dealt only with the venue provision of the Act. There is no reason for counsel for the plaintiff-respondent to express surprise and to feel that Judge Learned Hand's approaches on the *Stewart* case and *Kyriakos* v. *Goulandris*, 151 F. (2d) 132, 1945 A. M. C. 439 (2 Cir., 1945) are contradictory, since the former case involved only the question of whether an *American* seaman serving aboard a foreign vessel could sue the owners of that vessel in the United States. That was not the problem which was before the Court in the *Kyriakos* case and is not the problem presently before this Court.

7. *O'Donnel* v. *Great Lakes Co.*, 318 U. S. 36, 63 S. Ct. 488 (1943), cited by plaintiff-respondent on page 11 of the brief, applied the Jones Act as the law of the flag of the ship, since this was the applicable law rather than the

law of the port of call. This, of course, is in accord with the petitioner's position here.

8. The articles here were valid. While the articles such as signed here would, according to plaintiff-respondent, be invalid as applied to an American crew signing on an American vessel in American waters, still it has never been contended that the statutes relating to the form of articles should apply to foreign vessels, such as the s/s Randa, signing on foreign seamen in American ports. This is a recognition of the fact that there are certain matters which should more properly be left to be dealt with by the provisions of the law of the flag of the vessel. *The Quoge*, 261 Fed. 414, aff'd 266 Fed. 696 (4 Cir., 1920), cited on page 12 of plaintiff-respondent's brief, is inapplicable since it dealt with the validity of articles to serve aboard an American vessel, which articles were, of course, required to conform to the appropriate United States statutes.

9. *Farrell* v. *United States, et al.*, 336 U. S. 511, 34 S. Ct. 754, 58 L. Ed. 1171 (1949) where a seaman, who was permanently injured without fault by the ship and beyond hope of improvement, was held not to be entitled to maintenance and cure, was cited in petitioner's brief to show that, as applied to certain situations, the American concept of maintenance and cure was not as liberal as foreign law, which requires medical treatment and care of a seaman regardless of negligence. By reason of the lack of negligence, Farrell had no right to any indemnity or lump sum recovery under the Jones Act. In a similar situation under the Danish law, where negligence plays no part, Farrell would have been entitled to a substantial sum for his permanent condition.

10. The decisions in *Kyriakos* v. *Goulandris, supra*, *Taylor* v. *Atlantic Maritime Co., supra*, and *O'Neill* v. *Cunard White Star Ltd.*, 160 F. (2d) 446, 1947 A. M. C. 505 (2 Cir., 1947) have already been fully dealt with in petitioner's main brief.

11. If the decision of the Court of Appeals for the Second Circuit in the present case is deemed to remove inequality among seamen, as is urged in plaintiff-respondent's brief, it certainly will have the very opposite effect.

If two alien seamen aboard a foreign vessel should sustain simultaneous injuries aboard the vessel due to the same negligent cause, then under the present ruling the one who signed articles in other than an American port would be entitled to the benefits of the foreign law and could not proceed under the Jones Act, whereas the one who signed on in a United States port would be entitled to recover under the terms of the law of the flag and apparently could also proceed in our courts under the Jones Act, all because of the fortuitous circumstance that the latter was temporarily in the United States on an alien seaman's temporary visa at the time he joined the vessel. Yet these two men signed the same articles, agreed to be bound by the same terms, were subject to the same discipline, and in every way lived the same lives and were exposed to the same hazards.

12. Counsel for plaintiff-respondent in his brief stresses the alleged inequality existing between American and foreign seamen, and urges that the Jones Act should be applied since it is more liberal to the seamen. It is urged on behalf of petitioner that those are not valid arguments for applying the Jones Act to the factual situation herein. The real question, which counsel for plaintiff-respondent has avoided in his brief, is whether the Jones Act was by its terms intended to be applicable to a foreign seaman, who is injured in a foreign port after signing-on a foreign vessel in a United States port, when that seaman recovered the benefits to which he was entitled under the law of the flag.

CONCLUSION

A writ of certiorari should be granted in accordance with the prayer of the petition.

Dated: New York, N. Y., September 12, 1952.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 236

J. LADEFOGED,

Petitioner,

against

SVALT JORGEN LARSEN,

Plaintiff-Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

BRIEF FOR THE PETITIONER

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR THE PETITIONER

Opinion Below

The opinion of the United States Court of Appeals for the Second Circuit is reported at 196 F. (2d) 220 and is printed at pages 127-128 of the record.

Jurisdiction

The final judgment of the United States Court of Appeals for the Second Circuit was entered on May 2, 1952 (129-130). The petition for a writ of certiorari was filed July 25, 1952, and was granted October 13, 1952 (132). The jurisdiction of this Court to grant a writ of certiorari is provided by Title 28, United States Code, Section 1254.

The Question Presented

Does the Jones Act (Section 33 of the Act of June 5, 1920, C. 250, 41 Stat. 988, 1007, Title 46, United States Code, § 688) govern the liability of a foreign shipowner to a foreign seaman who signs on a foreign vessel in a United States port and is subsequently injured aboard the vessel in a foreign port as a result of the negligence of a fellow-seaman when that foreign seaman has recovered all the benefits to which he is entitled under the articles which he has signed and under the laws of the country whose flag that vessel flies?

The Statute Involved

Section 33 of the Act of June 5, 1920, C. 250, 41 Stat. 988, 1007, Title 46, United States Code, § 688, known as the Jones Act, reads as follows:

"SEC. 33. That section 20 of such Act of March 4, 1915, be, and is, amended to read as follows:

'SEC. 20. That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.'"

Statement

The complaint was filed on behalf of Evald Johann Larsen to recover the sum of $15,000 for injuries allegedly received while serving as an able-bodied seaman on board the S.S. Randa on October 7, 1946. Liability was predicated on the negligence of the defendant-owner through its employees under the provisions of the Jones Act.

On July 25, 1946, Evald Johann Larsen, a Danish citizen and a resident of Denmark who was temporarily in New York City, signed articles to serve aboard the S.S. Randa as an A.B. at the standard rate of pay agreed upon by the Danish Seamen's Union (pre-trial order, 16, 44, Def. Exh. A, 45). The S.S. Randa was a vessel flying the Danish flag and so registered, and was owned and operated by the petitioner, J. Lauritzen (pre-trial order, 16), a Danish citizen. The articles signed by Larsen called for a voyage to South America and further (pre-trial order, 16, Def. Exh. A, 44, 45) and bound Larsen to serve aboard the S.S. Randa for an indefinite period with the right to leave the vessel on seven days' notice, the owner having a similar right to discharge Larsen on seven days' notice (47).

The articles further stated that each member of the ship's crew was employed "on the basis of the regulations contained in the (Danish) Seaman's Law", as well as in accordance with the provisions set forth opposite each of their signatures (Def. Exh. A, 44, 45, middle of 1st page, directly above heavy horizontal line, also 2nd page, column 15).[1]

After leaving New York the S.S. Randa called at various South American ports and arrived in Havana, Cuba, about the beginning of October, 1946 (26). On October 7, 1946, while the vessel was still in Havana, Larsen was injured when he fell from the top of No. 1 hatch into the hold while engaged in inserting hatch boards with a fellow seaman (33-34).

[1] See stipulation of parties on English translation of portions of

Following the accident Larsen was hospitalized in Havana, Cuba, at the petitioner's expense (pre-trial order, 15-16, 35, 49). Subsequently, Larsen was returned to the United States as a passenger aboard a vessel owned by the petitioner and upon arrival in New York was admitted to the U. S. Marine Hospital at Ellis Island, where again all hospital and medical expenses were paid by the petitioner (pre-trial order, 16, 37, 49). Larsen was discharged as an in-patient from the United States Marine Hospital on December 9, 1946, and received out-patient treatment at the petitioner's expense until January 9, 1947, at which time he was declared fit for duty (40-41, pre-trial order, 16).

Larsen received all wages due him up to the date of the accident (pre-trial order, 16, 39), and also received the seven days' wages to which he was entitled under the Danish Maritime Law (39-40, Def. Exh. D, 90-92). In addition, Larsen received maintenance and subsistence from December 10, 1946, the date he was discharged from the Ellis Island Marine Hospital, until December 30, 1946 (90). During the course of Larsen's treatment in New York, the petitioner offered Larsen free transportation to Denmark for further treatment, but this offer was refused by Larsen (50). These were the benefits to which Larsen was entitled under the Danish law as subscribed to by Larsen when he signed the articles to serve aboard the S.S. Ranja (Def. Exh. C, 20-21, 89; Def. Exh. A, 44, 45; Def. Exh. D, 90-92).

The verdict of the jury in the District Court is printed at pages 115-116 of the record. The defendant's motions to dismiss and the denial thereof by the Trial Court are printed at pages 61, 97, 116 and 117 of the record. The judgment of the District Court of the United States for the Southern District of New York is printed at page 120 of the record. There is no reported District Court opinion.

The United States Court of Appeals for the Second Circuit affirmed the judgment of the Trial Court on the authority of *Kyriakos* v. *Goulandris*, 151 F. 2d 132, 1945 A. M. C. 439 (2 Cir., 1945), and *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597, 1950 A. M. C. 352 (2 Cir., 1950), cert.

den. 341 U. S. 915, 71 S. Ct. 736. The opinion of the United States Court of Appeals for the Second Circuit is reported at 196 F. 2d 220 and is printed at pages 127-128 of the record and the judgment is printed at pages 129-130 of the record.

Specification of Errors

Error is assigned to the Trial Court's rulings on petitioner's motions to dismiss and requests to charge as set forth below.

Upon the trial below in the United States District Court for the Southern District of New York before a jury the defendant, the petitioner herein, moved at the end of plaintiff's case, at the end of the defendant's case and after the jury verdict to dismiss the complaint for lack of jurisdiction. The motions were made on the grounds that this was an action between citizens of Denmark and, therefore, outside the jurisdiction of the Court and on the grounds that the Danish Law was properly applicable and not the Jones Act. These motions were denied by the Trial Court (61, 97, 116-117). The Trial Court also denied defendant's request to charge that the jury must find for the defendant if it found that the defendant had fulfilled its obligations under the Danish law (113) and the defendant excepted to the charges of the Trial Court that defendant was liable to plaintiff for injuries caused by the negligence of defendant's officers and seamen (113) no such right being given by the Danish law; and the charge that the Danish law had no application in the case (114-115).

Thereafter, the defendant, the petitioner herein, J. Lauritzen, appealed from the judgment in favor of the plaintiff as entered on December 21, 1951, and in particular from the denial of the above motions made by the defendant, as well as from the above denials of defendant's requests to charge and from the charges of the Trial Court to the effect that American law, rather than Danish law, was to be applied.

The United States Court of Appeals for the Second Circuit affirmed the judgment of the Trial Court on the authority of *Kyriakos* v. *Goulandris,* 151 Fed. 2d 132 (2nd Cir., 1945), and *Taylor* v. *Atlantic Maritime Co.,* 179 Fed. 2d 597 (2nd Cir., 1950), cert. den. 341 U. S. 915.

Summary of the Argument

The Jones Act, being an amendment of Sec. 20 of the Seamen's Welfare Act of March 4, 1915, 38 Stat. 1185, is not by its terms or context applicable to a foreign seaman on a foreign vessel injured in a foreign port just because he signed articles on the foreign form in New York to serve aboard that vessel. This is borne out by an examination of the language of the section, both within the framework of the Seamen's Welfare Act of 1915 to which it was an amendment and within the framework of the Merchant Marine Act of 1920 in which body it was enacted. What is more, the language of the section itself contradicts any contention that it was intended to be applicable to foreign seamen serving aboard foreign vessels.

The plaintiff-respondent is suing to recover from the Danish shipowner based on an alleged act of negligence occurring in a foreign port. The liability of the shipowner, if any, is a tort liability and should be governed by the law of the site of the tort, the Danish law, since the alleged act of negligence occurred aboard the Danish vessel outside the territorial waters of the United States.

The question of the liability of the Danish shipowner to the Danish seaman for the alleged act of negligence occurring in a foreign port is a matter strictly within the internal economy and discipline of that vessel and as such should be governed by the law of the flag. This doctrine has been widely accepted and supported by our courts, and exceptions have only been carved out when the matter vitally affected the peace and tranquillity of our ports or when the terms of a statute have been made specifically

applicable by Congress to foreign vessels under certain stated conditions. Congress did not carve out such an exception when it enacted this particular section of the Jones Act.

Lastly, the two cases cited by the Court of Appeals for the Second Circuit as authority for affirming the judgment of the Trial Court are fraught with contradictions, weaknesses, essential differences in facts, and misapplication of the doctrine of *stare decisis*. In ignoring the authorities and the context of the statute, the Court of Appeals has side-stepped a consideration of the international repercussions sure to result from this interpretation of the scope of the Jones Act.

POINT I

The terms of the Jones Act are not applicable to and were not intended by Congress to be applicable to foreign seamen on foreign vessels who are injured beyond the territorial limits of the United States.

The Jones Act (Sec. 33 of the Act of June 5, 1920, C. 250, 41 Stat. 988, 1007, Title 46, United States Code, § 688) which states,

> "That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; * * * "

was an amendment of Sec. 20 of the Seamen's Welfare Act of March 4, 1915 (C. 153, 38 Stat. 1164, 1185, Title 46, United States Code, § 688), known as the LaFollette Act. Sec. 20 of this 1915 Act provided as follows prior to amendment:

> "That in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority."

In this manner, the fellow-servant rule as applicable to seamen was sought to be abolished. But this Court in *Chelentis* v. *Luckenbach S.S. Co.*, 247 U. S. 372, 38 S. Ct. 501, 62 L. Ed. 1171 (1918), held that Sec. 20 of the Seamen's Welfare Act of 1915, in attempting to abolish the fellow-servant rule, had imposed no additional liability upon the shipowner beyond the liabilities already existing under the General Maritime Law. This Court, while recognizing the right of the seaman to bring his action in the State Court under the "saving to suitors' clause" held that the seaman, by the abolishment of the fellow-servant rule, was given a right, but lacked the remedy to enforce that right.

Later, this Court, in commenting and passing on the constitutionality of the Jones Act, in *Panama Railroad Company* v. *Johnson*, 264 U. S. 375, 44 S. Ct. 391, 68 Law Ed. 748 (1924), in an opinion by Mr. Justice Van Devanter, wrote as follows with respect to the amendment of this Sec. 20 of the Act of 1915, at 264 U. S. 389:

> "* * * As originally enacted, § 20 was part of an act the declared purpose of which was 'to promote the welfare of American seamen.' It then provided that in suits to recover damages for personal injuries 'seamen having command shall not be held to be fellow-servants with those under their authority,' and in *Chelentis* v. *Luckenbach S. S. Co.*, *supra*, p. 384, this Court treated it as part of the maritime law, but held it did not disclose a purpose 'to impose upon shipowners the same measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect of their employees on shore.' After that decision the section was reenacted in the amended form hereinbefore set forth as part of an act the expressed object of which was 'to provide for the promotion and maintenance of the American merchant marine.'"

Sec. 33 of the Merchant Marine Act of 1920, therefore, properly takes its place within the framework of the Act to which it was a partial amendment, i.e., the Seamen's Welfare Act of 1915.

The question to be determined is whether the expression "any seaman" as used in the Jones Act was intended to apply to the case of a foreign seaman injured aboard a foreign vessel in a foreign port by reason of the fact that the articles which that seaman had signed on the foreign form were signed by him in a United States port.

The answer is to be found by reference to the wording and context of the Seamen's Welfare Act of 1915. A section by section examination of the Act discloses that certain sections thereof were made specifically applicable to foreign vessels under certain stated conditions. With respect to the balance of the sections, the provisions were couched in terms applicable to United States vessels, but with no extension of their application to foreign vessels.

The Seamen's Welfare Act of March 4, 1915, known as the LaFollette Act, is entitled:

> "An Act To promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

The opening section of the 1915 Act amended Section 4516 of the Revised Statutes of the United States with respect to the requirement that a master of a vessel must sign-on, if obtainable, suitable seamen to replace those whose services have been lost by reason of desertion or casualty, and further provides that the master must report such losses to the "United States consul at the first port at which he shall arrive". This opening section is clearly restricted in its application to United States vessels by reason of the reference to United States consuls. It cannot be supposed that foreign vessels in foreign ports should

report crew deficiencies to United States consuls located in those foreign ports.

Sec. 2 makes certain provisions for the division of the crew into watches, as well as for distinctions between work on deck and work in the engineroom. It also provides that no unnecessary work shall be done on Sundays or on certain specified holidays. This section, however, is limited in its application to "all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, bays or sounds exclusively * * *." Sec. 2 is clearly inapplicable to other than United States vessels.

Sec. 3 of the Act amended Sec. 4529 of the Revised Statutes of the United States with respect to the time for payment of wages to seamen on coasting voyages, as well as in the case of vessels making foreign voyages. In this section the terminology used is that "the master or owner of any vessel making coasting voyages shall pay to every seaman, * * *;" and there is no indication that the section was to apply to foreign seamen serving aboard foreign vessels. The significance of this failure to refer to foreign vessels is pointed up when we examine the provisions of Sec. 4 and especially Sec. 11 of the Act.

Sec. 4 of the Act amended Sec. 4530 of the Revised Statutes of the United States with respect to the right of a seaman to receive on demand from the master of the vessel one-half the wages earned to that point at every port where such vessel loads or delivers cargo before the end of the voyage. The opening language of Sec. 4 states that "every seaman on a vessel of the United States shall be entitled to receive on demand * * *" and then outlines his rights.

The closing portion of Sec. 4 reads as follows:

> "*And provided further*, that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

This Sec. 4, therefore, stands out in relation to the three sections previously considered, in that Congress considered it necessary to include this specific provision in order to extend its terms to foreign vessels, and even then the extension was itself limited to "foreign vessels *while in harbors of the United States*". No effort was made by Congress to extend its application to foreign vessels while outside the territorial waters of this country.

The terms of this Sec. 4 were fully considered by this Court in the case of *Strathearn S.S. Co.* v. *Dillon*, 252 U. S. 348, 40 S. Ct. 350, 64 L. Ed. 607 (1919), wherein Mr. Justice Day, in a unanimous opinion, held that the terms of the section were applicable to a British subject serving aboard a British vessel while that vessel was in a port of the United States. The fact that certain contracts which ran counter to the purposes of the statute were voided, did not render Sec. 4 of the statute unconstitutional as destructive of contract rights. Mr. Justice Day held that this Court had fully considered the matter in *Patterson* v. *Bark Eudora*, 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002 (1903), and that there was no doubt as to the authority of Congress to pass a statute of this sort specifically applicable to foreign vessels in our ports.

Sec. 5 of the Act of 1915 amended Sec. 4559 of the Revised Statutes of the United States with respect to provisions for the handling of complaints by the officers or crew of a vessel while in a foreign port when the vessel was alleged to be in an unsuitable condition to go to sea. The wording of this section is that "upon a complaint in writing signed by the first and second officers or a majority of the crew of any vessel, while in a foreign port, * * * the consul or a commercial agent who may discharge any of the duties of a consul shall cause to be appointed" certain persons to examine into the cause of the complaint. In this section the expression "any vessel" is used, but there are no additional provisions extending the terms of the section to foreign vessels. In fact, it would be hard to imagine that Congress could have intended to regulate

the actions of foreign consuls or to have foreign seamen serving aboard foreign vessels present their complaints and problems to a United States consul in a foreign port for correction of the alleged deficiencies. Such an exercise of power by a United States consul in a foreign port with respect to a foreign vessel and foreign seamen would be totally out of line with basic theories of international jurisdiction.

Sec. 6 of the Act of 1915 amended Sec. 2 of the Act of March 3, 1897, as to the provisions for crew space and sanitary conditions aboard "all merchant vessels of the United States". This section was clearly not intended to apply to other than merchant vessels of the United States.

Sec. 7 of the Act of 1915 amended Sec. 4596 of the Revised Statutes of the United States and specified punishments for certain offenses as to "any seaman who has been lawfully engaged or any apprentice to the sea service". Here again, as to the terms "any seaman", there is no specific provision making the section applicable to foreign seamen serving aboard foreign vessels such as were found in Sec. 4, or will be found later in Sec. 11.

Sec. 8 of the Act of 1915, amended Sec. 4600 of the Revised Statutes of the United States and provided that "it shall be the duty of all consular officers to discountenance insubordination by every means in their power and, where the local authorities can be usefully employed for that purpose, to lend their aid and use their exertions to that end in the most effectual manner." The expression "all consular officers" in Sec. 8 is as general as the expression "any seaman" found in Sec. 7 and later in Sec. 11, but here again it is clear that it was the intent of Congress that "all consular officers" meant only consular officers of the United States. As stated by this Court in *Sandberg v. McDonald*, 248 U. S. 185, 39 S. Ct. 84, 63 L. Ed. 300 (1918), at 248 U. S. 195:

> "Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction."

Sec. 9 of the Act of 1915, amended Sec. 4611 of the Revised Statutes of the United States with respect to flogging and corporal punishment "on board of any vessel". No specific application to foreign seamen aboard foreign vessels is to be found in this section. The significance of the failure to extend its application is pointed up by referring to those sections where such an extension was made.

Sec. 10 of the Act of 1915, amended Sec. 23 of the Act entitled "An Act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce", approved December 21, 1898, 30 Stat. 755, 763, with respect to the daily requirements of water and butter. Here again, no attempt was made by the language of the section to extend its application to other than United States vessels or American seamen.

In Sec. 11 of the Seamen's Act of 1915 we find a repetition of the situation existing in Sec. 4 of that same Act. The provisions are specifically extended to foreign vessels while in waters of the United States. Sec. 11 amended Sec. 24 of the Act entitled "An Act to amend the laws relating to American seamen for the protection of such seamen and to promote commerce", approved December 21, 1898. Sec. 24 of that Act of 1898 was, in turn, an amendment of Sec. 10 of Chapter 121 of the laws of 1884, 23 Stat. 53, as in turn amended by Sec. 3 of Chapter 421 of the laws of 1886, 24 Stat. 79. Sec. 11 of the Act of 1915 amended all these prior statutes as to the prohibition against paying "any seaman" wages in advance of the time when he had actually earned the same. Sub-section (e) of this Sec. 11 of the Act of 1915 reads as follows:

> "That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation."

Sub-section (a) of this section used the words "that it shall be and is hereby made unlawful in any case to pay any seaman wages in advance * * *." Yet, in spite of the use of the words "any seaman" Congress deemed it necessary to add sub-section (e) in order to extend the terms of this section to apply as well to foreign vessels in the waters of the United States. In other words, Congress did not believe that the use of the expression "any seaman" was in and of itself sufficient to require application to foreign vessels, even if those vessels were in the ports of the United States.

This situation finds an immediate parallel in the wording of the Jones Act which was, of course, an amendment of Sec. 20 of this same Seamen's Welfare Act of 1915. The opening language of the Jones Act reads, "That any seaman who shall suffer personal injury in the course of his employment may * * *." But there is no provision contained in Sec. 20, as amended, applying that section to foreign vessels under any circumstances whatsoever.

If Congress had intended that the Jones Act should apply to injuries sustained by foreign seamen aboard a foreign vessel while outside the territorial waters of the United States, the necessary language was at hand for them specifically so to provide. It is significant that Congress added no such provisions.

In *Patterson* v. *Bark Eudora, supra,* this Court considered the effect of Sec. 24 of the Act of December 21, 1898, 30 Stat. 755, 763, to which Sec. 11 of the Seamen's Act of 1915 was an amendment, as described above. This Sec. 24 of the Act of December 21, 1898, similarly made it unlawful in any case to pay "any seaman" wages in advance of the time when he had actually earned same. It further stated that the provisions of the section were to be applicable as well to foreign vessels as to vessels of the United States.

The case involved primarily a question of the power of Congress to enact such a provision applicable to foreign

vessels. In the words of Mr. Justice Brewer, at 190 U. S. 173:

> "But the main contention is that the statute is beyond the power of Congress to enact, especially as applicable to foreign vessels. It is urged that it invades the liberty of contract which is guaranteed by the Fourteenth Amendment to the Federal Constitution * * *."

The Court held that the provision making this section of the Act specifically applicable to foreign vessels was constitutional and within the domain of Congress under the commerce clause of the Constitution.

It has been contended on behalf of the plaintiff-respondent that the remedy of the Jones Act is available to foreign seamen serving aboard foreign vessels, and it is further contended that such a conclusion finds support in the decision of this Court in *Patterson* v. *Bark Eudora, supra.* As a matter of fact, the decision of this Court in *Patterson* v. *Bark Eudora* can have no parallel application to the provisions of the Jones Act, since, as has been pointed out, *Patterson* v. *Bark Eudora, supra,* involved the constitutionality of a section specifically applicable to foreign vessels, whereas the Jones Act contains no such provision. The most that can be said for this case in connection with the applicability of the Jones Act to foreign vessels and foreign seamen is that Congress would have been within Constitutional limits *if* it had held that the Jones Act was to apply to foreign vessels and foreign seamen serving on those vessels *while in waters of the United States.* The value of the holding in *Patterson* v. *Bark Eudora, supra,* to the facts herein is totally vitiated by the fact that Congress made no such provision in the Jones Act, let alone as to injuries to an alien on a foreign vessel in a foreign port or on the high seas.

Later, this Court considered the interpretation of this Sec. 11 of the Act of 1915 in *Sandberg* v. *McDonald,* 248 U. S. 185, 39 S. Ct. 84, 63 L. Ed. 300 (1918). This Court

held that the provisions of Sec. 11 did not apply to advancements made in foreign ports to alien seamen shipping abroad on foreign vessels, pursuant to contracts valid under the foreign law, in the following language at 248 U. S. 195:

> "Had Congress intended to make void such contracts and payments a few words would have stated that intention, not leaving such an important regulation to be gathered from implication."

And later at page 196:

> "In the same section, which thus applies the law to foreign vessels while in waters of the United States, it is provided that the master, owner, consignee, or agent of any such vessel, who violates the provisions of the act, shall be liable to the same penalty as would be persons of like character in respect to a vessel of the United States. This provision seems to us of great importance as evidencing the legislative intent to deal civilly and criminally with matters in our own jurisdiction. Congress certainly did not intend to punish criminally acts done within a foreign jurisdiction; a purpose so wholly futile is not to be attributed to Congress."

For the reasons discussed above with respect to *Patterson* v. *Bark Eudora, supra,* the *Sandberg* case is equally undeterminative of the extent of the application of the Jones Act, since the *Sandberg* case also involved the interpretation of a section of the statute specifically extended to foreign vessels. It must be noted, however, that in spite of Congress' intent to make Sec. 11 applicable to foreign vessels while in waters of the United States, this Court held that the doctrine was not to be extended beyond the territorial limits of the United States both by reason of the statute and for reasons of common sense.

How then can we justify the application of the Jones Act to an injury to an alien seaman aboard a foreign vessel while in a foreign port, when the wording of the Jones Act contains no provision making it applicable to foreign

seamen serving aboard foreign vessels under any geographical conditions whatsoever?

Sec. 12 of the Act of 1915 repealed Sec. 4536 of the Revised Statutes of the United States and provided that no wages due or accruing to "any seaman" or apprentice should be subject to attachment or arrestment. Note that Sec. 12, as does Sec. 11, uses the expression "any seaman" and yet Sec. 12 contains no specific extension to foreign vessels. If a specific extension was required in Sec. 11 after the use of the expression "any seaman", then such a specific extension would equally be necessary as applied to the same expression when used in Sec. 12.

Sec. 13 of the Act of 1915 establishes certain requirements as to the ~~number of~~ the deck crew who are required to have a rating of not less than A.B. and requires 75% of the crew of each department to understand any order given by the officer of such vessel. The language of this section is in the form of a prohibition, reading "that no vessel of 100 tons gross and upward, except those navigating rivers exclusively and the smaller inland lakes and except as provided in Sec. 1 of this Act, shall be permitted to depart from any port of the United States unless she has on board * * *." Here again, no specific extension is made as to foreign seamen or foreign vessels, and, in fact, the subsequent language in Section 13 which provides that,

> "Graduates of school ships approved by and conducted under rules prescribed by the Secretary of Commerce may be rated able seamen after twelve months service at sea * * *",

indicate that this section of the Act was not intended to apply to other than American vessels, since Congress certainly did not intend that all foreign seamen were to apply for licenses and certificates from the United States Department of Commerce before being qualified to ship aboard foreign vessels. This failure to provide for foreign vessels is pointed up by reference to the following section

of the Act, i.e., Sec. 14, where we find a specific application to foreign vessels leaving ports of the United States. Sec. 14 of the Act of 1915 amended Sec. 4488 of the Revised Statutes by adding thereto specific regulations as to life saving appliances, the minimum number of davits and open boats, and, among other things, for a minimum number of certified lifeboat men. This section contains the following language:

> "Provided, that foreign vessels leaving ports of the United States shall comply with the rules herein prescribed as to life saving appliances, their equipment, and the manning of same."

Here again, as was found in Sec. 4 and Sec. 11 of the Act of 1915, there is a specific provision as to the extension of the section to foreign vessels under certain stated conditions. It becomes increasingly obvious, therefore, that Congress was well aware of the fact that certain of these sections were to be applied to foreign vessels, whereas certain of them were not. Where language is found making specific reference to the application of a section to foreign vessels, then it must be concluded that such was the intent of Congress, and conversely, it must be concluded that, as to those sections where such a specific extension is omitted, it was the intent of Congress that no such extension be made. If that were not the case, then such wording would be mere surplusage and of no effect whatsoever.

Section 15 of the Act of 1915 provides that: "the owner, agent, or master of every barge which, while in tow through the open sea has sustained or caused any accident, shall be subject, in all respects to the provisions of Sections ten, eleven, twelve and thirteen of chapter three hundred and forty-four of the Statutes at Large, approved June twentieth, eighteen hundred and seventy-four," and further provides that the reports prescribed in those sections shall be transmitted by collectors of customs to the Secretary of Commerce, who shall, in turn, transmit them in summary form to Congress annually. Here again,

no specific provision is made applying the terms of this section to foreign vessels, and we should bear in mind that if such had been the intention of Congress, then the language was readily available, for, as has been noted above, such language had already been used three times in the same Act.

Sec. 16 of the Act of 1915 "requested and directed" the President to give notice to the several governments that all treaties and conventions between the United States and such governments with respect to the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of the United States in foreign ports and for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States be terminated upon the expiration of certain specified periods. This request was also directed to "any other treaty provision in conflict with the provisions of this Act."

The Congressional Record bears witness to the prolonged discussion and debate which the provisions of this particular section evoked. On the one hand, Senator La-Follette of Wisconsin was urging upon Congress the desirability of the termination of such treaties, whereas Senator Burton of Ohio was the leader of the faction which urged a more moderate course. In the end, Senator La-Follette had his way, for Sec. 16 as finally enacted did call for the termination of such treaties. (Congressional Record, 63rd Congress, 1st Session, Vol. 50, Part 6, pages 5761-5792.)

It is interesting to note that in spite of the urging of Senator LaFollette, from whom the Act of 1915 derives its name, the provisions of that Act were not made uniformly applicable to foreign vessels, but only certain sections thereof, and then only under certain specified conditions and situations.

Evidence of the reluctance in certain quarters of Congress to make even these specified sections applicable to

foreign vessels is to be found in the Report of the House Committee on Merchant Marine and Fisheries. In commenting and passing on the proposed Sec. 4 of the Act dealing with half wages the Report states (House Report No. 851, 63rd Congress, 2nd Session, page 18):

> "The application of this section, however, to foreign vessels raises a serious question."

And later at page 20 of the same Report:

> "It should be stated that the Committee are not unanimous in making this provision apply to foreign ships.
>
> Some members of the Committee doubt our right and the wisdom of making it apply to foreign ships and question its value to our merchant marine."

Sec. 17 of the Act of 1915 provided for the repeal of the various treaties designated in Sec. 16 upon the termination of the periods of notice required.

Sec. 18 of the Act of 1915 provided as to the time the Act was to take effect.

Sec. 19 of the Act of 1915 amended Sec. 16 of the Act of December 21, 1898, entitled "An Act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce," by adding thereto a provision that if "any seaman" incapacitated from service by injury or illness was on board a vessel so situated that a prompt discharge requiring the personal appearance of the master of the vessel "before an American consul or consular agent was impracticable," then such seaman himself was to be sent to a consul or consular agent who was in turn directed to care for him and defray the cost of his maintenance and transportation. Here again, although the section of the Act uses the expression "any seaman", it is obvious that it refers to seamen aboard American vessels, for it refers specifically to the requirement of a personal appearance of the master of the vessel before an "American consul or consular agent".

The next and last section, Sec. 20 of the Act of 1915, was the section which sought to abolish the fellow-servant doctrine as applied to seamen, and which was superseded and amended by the passage of the Jones Act in 1920.

If we consider the Jones Act within the framework of the Merchant Marine Act of June 5, 1920, of which it was Sec. 33, we are forced to the same conclusion that the expression "any seaman" was not intended to cover foreign seamen serving on foreign vessels who were injured in foreign ports.

The Merchant Marine Act of June 5, 1920, as has been pointed out above, was "An Act To provide for the promotion and maintenance of the American Merchant Marine * * *" and as such its provisions and sections covered the following subjects: the repeal of prior legislation with respect to appropriations for the Military and Naval establishments; the repeal of prior legislation with respect to charter and freight rates and to the requisitioning of vessels by the Government; the establishment of the United States Shipping Board; authorization for the sale or charter of Government-owned vessels to citizens of the United States; further authorization with respect to the sale of other property by the United States Shipping Board; provisions for the investigatory powers of the United States Shipping Board with respect to the operation of vessels by citizens of the United States; provisions for the carrying of all mails of the United States on American-built vessels documented under the laws of the United States if practicable; provisions for a limitation of the number of passengers to be carried aboard cargo vessels documented under the laws and flag of the United States; provisions stating that no merchandise shall be transported between points in the United States on other than vessels built in and documented under the laws of the United States and owned by persons who are citizens of the United States; all the provisions of the Ship Mortgage Act of 1920; a further amendment of the prohibition against

the payment of advance wages, earlier mentioned, not amending, however, the specific provisions as to the applicability to foreign vessels within the harbors of the United States; and finally, the establishment of certain definitions as to the ownership of vessels by citizens of the United States.

In short, there is nothing in the Merchant Marine Act of June 5, 1920, calling for any application whatsoever to foreign seamen serving aboard foreign vessels in foreign ports, since the whole Act is concerned with the machinery necessary for the establishment and operation of the United States Shipping Board and the operation, supervision, sale and purchase of vessels of the United States.

The report of the Senate Committee on Commerce made the following statement with respect to the aims of the Merchant Marine Act of 1920 (Senate Report No. 573, 66th Congress, 2nd Session, p. 2):

> "No interests but American interests have been kept in view. We are sure that other nations will look after their citizens and their needs, and if our business is to be cared for, we must do it."

If we look to the wording of the Jones Act, totally aside from its context within the framework of the Acts of 1915 or 1920, further evidence is found that Congress did not intend to include within its provisions foreign seamen serving aboard foreign vessels injured in foreign ports. The closing sentence of Sec. 33 of the Merchant Marine Act of 1920 reads as follows:

> "* * * Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

The use of the word "jurisdiction" has been interpreted by this Court not to relate to the general jurisdiction of the court, but to venue only. *Panama Railroad Company v. Johnson*, 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924).

Even granting such an interpretation of the word "jurisdiction", however, this closing sentence of Sec. 33 makes it abundantly clear that Congress had in mind domestic employers and shipowners rather than foreign shipowners when it adopted this particular phraseology.

What foreign shipowner would be likely to reside in or have his principal office in the United States? How would a foreign seaman proceed under the language of the Jones Act if his employer, the foreign shipowner, did not live in the United States and did not have any office located in the United States?

If Congress had intended to give a remedy to the foreign seaman serving aboard a foreign vessel under the Jones Act, it could very easily have so provided by giving him an *in rem* remedy. With such a remedy available, the foreign seaman could have proceeded against the vessel upon her arrival in any United States port. It is significant that Congress did not make any such provision. A lien against the vessel is essential to every proceeding *in rem*, and no such lien arises by reason of the Jones Act in favor of an injured seaman. This Court specifically so held in *Plamals* v. *s/s Pinar Del Rio*, 277 U. S. 151, 48 S. Ct. 457, 72 L. Ed. 827 (1928).

There may be isolated instances in which the defendant employer of the foreign seaman, while having his principal office located in the foreign country, may at the same time have an office in this country so as to allow the injured foreign seaman to start an action under the Jones Act in the court of the district in which such local office is located. But if we are to impute to Congress the intent to provide for foreign seamen serving aboard foreign ships under the terms of the Jones Act in spite of its language, then we must equally be prepared to admit that by the section as presently written, Congress has given only a partial remedy, since the majority of foreign seamen would find it impossible to comply with the jurisdiction and venue requirements as presently constituted.

It has been argued by plaintiff-respondent, both in the Court of Appeals and in the brief submitted in opposition to the petition for a writ of certiorari in this Court, that the Jones Act should be applied to foreign seamen serving on foreign ships who sign on in the United States and are subsequently injured outside the territorial waters of the United States in order to close the gap alleged to exist between the operating costs of foreign and American shipowners. This argument is apparently based on a belief that such a construction would indirectly subsidize the American Merchant Marine, and that as a result the burden falling upon the United States taxpayer would be lightened.

Plaintiff-respondent ignores our national policy against indirect subsidies to shipping as shown by the Merchant Marine Act of June 29, 1936 (C. 858, 49 Stat. 1985, 46 U. S. C. § 1101), and the Congressional Reports.

Prior to the passage of the Merchant Marine Act of 1936, Congress had provided aid to American shipping in the form of lending money at low rates of interest to the American shipping companies for the purpose of building new ships for foreign trade. Congress had, in addition, appropriated large annual sums under the guise of payments for ocean-mail contracts. Plaintiff-respondent now seeks to have the court construe the Jones Act as applying to foreign seamen in order to give American shipowners an additional subsidy. However, President Roosevelt, in his Message to Congress on the Merchant Marine Act of 1936, dated March 4, 1935, in speaking of the difference between the ocean-mail payments actually made and the reasonable cost of such service, stated (74th Congress, House Document No. 118, p. 2):

> "The difference, $27,000,000, is a subsidy, and nothing but a subsidy. But given under this disguised form it is an unsatisfactory and not an honest way of providing the aid that Government ought to give to shipping.
>
> *I propose that we end this subterfuge.* If the Congress decides that it will maintain a reasonably ade-

quate American Merchant Marine I believe that it can well afford honestly to call a subsidy by its right name." (Emphasis supplied.)

More recent evidence of the policy of our government to avoid the indirect subsidy is found in President Truman's request made in August, 1952, to the Secretaries of Commerce and the Treasury to prepare reports on the existing law offering tax deferments on shipping earnings as an added inducement to the setting aside of funds for new construction. President Truman asked for a plan to abrogate these tax benefits and establish some other financial assistance in the form of a direct subsidy.

It is submitted, that for the courts of the United States to attempt to reduce the burden of the United States taxpayer by subjecting foreign shipowners to higher insurance rates for personal injury coverage would be to resort to that very form of "subterfuge" which the Merchant Marine Act of 1936 was explicitly designed to avoid. The decisions of our courts have no place within this province.

According to present policy, foreign as well as United States vessels are subject to regulation by multilateral Conventions or treaties, rather than by unilateral legislation. The most recent example was the International Convention for Safety of Life at Sea, 1948, held in London. This Convention was signed in London on June 10, 1948, by the respective plenipotentiaries of the government of the United States and the governments of 27 other countries. The provisions of the Convention were submitted to the Senate on January 13, 1949, and were ratified without amendment or exception on April 20, 1949 (Congressional Record, 81st Congress, 1st Session, Vol. 95, Part 4, pages 4822-4825). Subsequently, on November 19, 1951, the fifteenth country deposited its ratification (Denmark was one of the fifteen) and the Convention thereby came into force on November 19, 1952. President Truman, by proclamation dated September 10, 1952, proclaimed that the Convention was to be observed and fulfilled with good

faith by the United States on and after November 19, 1952.

This Convention provides, in brief, for all vessels to obtain from their own countries certificates of compliance with the requirements of the Convention with respect to: life saving equipment, watertight bulkheads, double bottoms, load lines, stability tests, log entries, safety of electrical installations, fire protection and patrols, radio installations and the carriage of dangerous cargoes. Also promulgated were uniform regulations for preventing collisions at sea. The full text of the Convention is not yet officially reported in the United States Statutes at Large, but can be read in Department of State Publication 3282, International Organization and Conference Series I, 6.

According to plaintiff-respondent's principles of statutory construction, the same result should have been reached by extending American inspection statutes to cover all ships trading to the United States. That Congress and the President acted through the Convention is proof positive of our present policy to steer clear of applying United States statute law to foreign vessels, but to accomplish the same aims through multilateral action calling for consent by all concerned.

Counsel for plaintiff-respondent has stressed the alleged inequality existing between American and foreign seamen, and urges that the Jones Act should be applied since it is more liberal to the seamen.

Those are not valid arguments for applying the Jones Act to the factual situation herein. The real question is whether the Jones Act was by its terms intended to be applicable to a foreign seaman, who is injured in a foreign port after signing-on a foreign vessel in a United States port, when that seaman recovered the benefits to which he was entitled under the law of the flag.

Having examined the wording of the Jones Act, both within the framework of the Act of 1915, to which it was an amendment and within the framework of the Merchant Marine Act of 1920, in which it was enacted, we return to the question: Does "any seaman" as used in the Jones Act,

mean foreign seamen serving aboard foreign vessels who are injured in foreign ports aboard those vessels?

Certainly the provisions of the Acts would not so indicate, for when Congress intended any particular section to apply to other than United States vessels, a specific provision was invariably included, and as a result, no guesswork is required to determine what sections of the Acts are limited to United States vessels and what sections of the Acts are to be further extended so as to apply as well to foreign vessels under specified conditions.

Sec. 11 of the Act of 1915 which prohibited the payment of advance wages also used the expression "any seaman" in defining its applicability, but Congress did not feel that that alone was sufficient to extend to other than United States vessels, because sub-section (e) of that Sec. 11 called for specific application "to foreign vessels while in waters of the United States." If Congress had intended the Jones Act to apply as well to foreign vessels, then why was such a specific extension not included within its terms?

As stated by this Court in *Sandberg* v. *MacDonald*, at 248 U. S. 195, with respect to application of Sec. 11 to foreign vessels while in other than United States ports:

> "Had Congress intended to make void such contracts and payments, a few words would have stated that intention, not leaving such an important regulation to be gathered from implication."

POINT II

The Jones Act is not applicable to this action, since the action sounds in tort and seeks a recovery for a negligent act committed outside the territorial waters of the United States and must be governed by the law of the site of such negligent act.

In this action a Danish seaman seeks recovery under the Jones Act for injuries sustained aboard the s/s Randa,

a Danish vessel, while the vessel was in Havana, Cuba (pre-trial order, 16, 33-34). The plaintiff was injured on October 7, 1946, when he fell from the top of No. 1 hatch into the hold while engaged in inserting hatch boards with a fellow seaman (33-34). Two and one-half months earlier, on July 25, 1946, Larsen, a Danish citizen and resident of Denmark who was temporarily in New York City, signed articles to serve aboard the s/s Randa (pre-trial order, 16, 44, Defendant's Exhibit A, 45). The articles stated that each member of the ship's crew was employed "on the basis of the regulations contained in the (Danish) Seaman's Law" as well as in accordance with the provisions set forth opposite each of their signatures (Defendant's Exhibit A, 44, 45, middle of first page, directly above horizontal line, also second page, column 15).[1] It is submitted that the basis for the recovery sought against J. Lauritzen, the shipowner, is the alleged liability of that shipowner for the tortious conduct of a fellow-seaman of the plaintiff, and that the extent and consequences of this liability must be governed by the law of the place of the injury, the Danish law, which was both the law of the site of the tort and the law to which Larsen subscribed at the time he signed shipping articles on July 25, 1946.

The Jones Act states in part:

> "That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; * * *."

The Federal Employers' Liability Act of 1908, C. 149, 35 Stat. 65, Title 45, U. S. Code § 51, was thus incorporated into the Jones Act. Sec. 1 of the Federal Employers' Liability Act provides:

> "Every common carrier by railroad while engaging in [interstate] commerce * * * shall be liable in dam-

[1] See stipulation of parties on English translation of portions of Defendant's Exhibit A, filed in this Court November 24, 1952.

> ages to any person suffering injury while he is employed by such carrier in such commerce, * * * for such injury resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier * * *."

The fundamental elements required for a recovery under the Jones Act are, therefore, an act of negligence by an officer, agent, or employee of the employer and a resulting injury by an employee. The vital element is negligence. Without negligence there can be no recovery. This is not a compensation statute coupled with a contractual relationship. The Jones Act establishes the machinery for a recovery based on tort against the employer.

The necessity for negligence as the basis for a recovery under the Jones Act and affirmation that liability thereunder sounds in tort is found in the decision of this Court in *Jamison* v. *Encarnacion,* 281 U. S. 635, 50 S. Ct. 440, 74 L. Ed. 1082 (1930). This was an action brought by a longshoreman against an employing stevedore to recover for damages for personal injuries sustained while a member of a crew loading a barge lying in navigable waters of the United States in Brooklyn, New York. Mr. Justice Butler wrote as follows at 281 U. S. 639 with respect to plaintiff's recovery:

> "Plaintiff was a seaman within the meaning of § 33 (*International Stevedoring Co.* v. *Haverty, supra*) and, as he sustained the injuries complained of while loading a vessel in navigable waters, the case is governed by the maritime law as modified by the Acts of Congress above referred to. *Northern Coal Co.* v. *Strand,* 278 U. S. 142. *Panama R. R. Co.* v. *Johnson,* 264 U. S. 375. He is entitled to recover if within the meaning of § 1 his injuries resulted from the negligence of the foreman."

And then later at pages 640-641:

> "As the Federal Employers' Liability Act does not create liability without fault (*Seaboard Air Line* v. *Horton,* 233 U. S. 492, 501), it may reasonably be con-

strued in contrast with proposals and enactments to make employers liable in the absence of any tortious act, for the payment of compensation for personal injuries or death of employees arising in the course of their employment."

In *Cortes* v. *Baltimore Insular Line*, 287 U. S. 367, 53 S. Ct. 173, 77 L. Ed. 368 (1932), this Court considered the question of the liability of an American shipowner for an injury sustained by a seaman aboard its vessel in the course of his employment, resulting from the failure of the master of the ship to furnish him care and cure when the seaman was stricken with pneumonia. In discussing the question of whether a right of action was given to the personal representative if the injury resulted in death, Mr. Justice Cardozo made it clear that he considered the liability to be one in tort when he wrote as follows at 287 U. S. 374:

> "* * * Here performance was begun when the vessel started on her voyage with Santiago aboard and with care and cure cut off from him unless furnished by officers or crew. From that time forth withdrawal was impossible and abandonment a tort. Given a relation involving in its existence a duty of care irrespective of a contract, a tort may result as well from acts of omission as of commission in the fulfilment of the duty thus recognized by law. * * * "

An essential element of the tort, i.e., negligence, thus occurred at the port of departure, and the site of the tort was the American flag vessel on a coastwise voyage (287 U. S. 370).

Further support for the contention that recovery under the Jones Act for an injury suffered by reason of the negligence of a fellow servant, is a recovery for a tort and should be governed by the law of the place where such tort occurred is found in *New York Central R. R. Co.* v. *Chisholm*, 268 U. S. 29, 45 S. Ct. 402, 69 L. Ed. 828 (1925), where this Court considered the applicability of the Federal Employers' Liability Act to an injury sustained by an

employee of an American railroad while operating in Canada. This decision is properly in point, since the Jones Act, as has been pointed out, absorbed within its framework the United States statutes modifying or extending the common law, right or remedy in cases of personal injury to railway employees. This Court, in an opinion by Mr. Justice McReynolds, denied a recovery under the Federal Employers' Liability Act to the administrator of the deceased employee of the railroad who was fatally injured in Canada, and made it clear that the recovery, if anything, was a tort recovery in the following terms at 268 U. S. 31:

> "The statute under consideration lacks the essential characteristics of those, now very common, which provide for compensation to employees injured in the line of duty irrespective of the master's fault. It only undertakes to impose liability for negligence which must be shown by proof (*Southern Ry.* v. *Gray*, 241 U. S. 333, 339; *New York Central R.R.* v. *Winfield*, 244 U. S. 147, 150), and demands under it are based wholly upon tort."

This decision interprets the very form of recovery with which we are presently concerned and holds that the statute deals with a tort rather than a contract remedy. It is not to be applied extraterritorially, for Mr. Justice McReynolds stated that, upon a construction of the Act, the action would not lie, since:

> "The carrier was subject only to such obligations as were imposed by the laws and statutes of the country where the alleged act of negligence occurred; and the administrator could not rely upon any others" (32).

New York Central R. R. Co. v. *Chisholm*, *supra*, presented a situation even more striking than the one at hand, since the plaintiff's decedent had not only been employed in the United States, but was also a citizen of the United States and primarily domestically employed. The holding of this Court was that there could be no right of action based upon the Federal Employers' Liability Act when the

site of the alleged act of negligence was outside the United States. Since such has been the holding of this Court, there would seem to be no grounds upon which the application of the Jones Act, which made the same provision for a recovery for acts of negligence, could be extended to include therein acts in a foreign port resulting in an injury to a foreign seaman serving aboard a foreign ship.

Some argument has been made that the decision of this Court in *New York Central R. R. Co.* v. *Chisholm, supra,* has been impaired by the later decision of this Court in *Cortes* v. *Baltimore Insular Line, supra.* This argument was apparently based on the statement in the latter case at 287 U. S. 377 that:

> "We do not read the act for the relief of seamen as expressing the will of Congress that only the same defaults imposing liability upon carriers by rail shall impose liability upon carriers by water."

Any distinction which Mr. Justice Cardozo pointed out in his decision in *Cortes* v. *Baltimore Insular Line, supra,* when read in context, however, related only to a question of what constituted negligence towards an employee on the part of a shipowner as against what constituted negligence towards an employee on the part of a railroad. No distinction was made as to the necessity for a showing of negligence, and no distinction was made as to the nature of the recovery or the site of the tort. This is pointed up at page 377 of 287 U. S. by considerable discussion of the responsibility of a railroad to rescue an employee who has fallen from a locomotive, as against the liability of the shipowner to rescue a seaman who has fallen into the ocean. *New York Central R. R. Co.* v. *Chisholm, supra,* involved a question of the applicability of the Federal Employers' Liability Act to an extraterritorial tort involving a man who had been employed in the United States by a United States railroad. *Cortes* v. *Baltimore Insular Line, supra,* required no jurisdictional discussion whatsoever, involving, as it did, a tort committed aboard an American

vessel (52 F. (2d) 22) on a coastwise voyage (287 U. S. 370). The *Cortes* decision hinged upon whether the failures to act on the part of the shipowner and its employees constituted negligence so that a tort resulted, not whether the Jones Act or the Federal Employers' Liability Act should be given extraterritorial effect.

The reasons for these holdings, that the liability for a tort should be governed by the laws of the place where that tort occurred, are set forth in the decisions of this Court in *Slater* v. *Mexican National R. R. Co.*, 194 U. S. 120, 24 S. Ct. 581, 48 L. Ed. 900 (1903) and *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 29 S. Ct. 511, 53 L. Ed. 826 (1909).

Slater v. *Mexican National R. R. Co.*, supra, involved an action brought in the United States Circuit Court for the Northern District of Texas by the widow of the deceased, a citizen of Texas residing in Laredo, who was employed by a Colorado corporation owning and operating a railroad running from Laredo to Mexico City. The deceased was fatally injured through the negligence of this corporation while working in its yard in Mexico just across the Rio Grande River. The action was to recover damages for his death. This Court affirmed the decree of the Circuit Court of Appeals wherein the action was ordered to be dismissed, and Mr. Justice Holmes wrote as follows at 194 U. S. 126 with respect to the enforcement in the United States of the cause of action for the deceased's death in Mexico:

> "But when such a liability is enforced in a jurisdiction foreign to the place of the wrongful act, obviously that does not mean that the act in any degree is subject to the *lex fori*, with regard to either its quality or its consequences. On the other hand, it equally little means that the law of the place of the act is operative outside of its own territory. The theory of the foreign suit is that although the act complained of was subject to no law having force in the forum, it gave rise to an obligation, an *obligatio*, which, like other obligations, follows the person, and may be

enforced wherever the person may be found. *Stout* v. *Wood*, 1 Blackf. (Ind.) 71; *Dennick* v. *Railroad Co.*, 103 U. S. 11, 18. But as the only source of this obligation is the law of the place of the act, it follows that that law determines not merely the existence of the obligation, *Smith* v. *Condry*, 1 How. 28, but equally determines its extent."

American Banana Co. v. *United Fruit Co.*, supra, was an action brought to recover damages under the Sherman Anti-Trust Law of July 2, 1890, C. 647, 26 Stat. 209, as a result of the plaintiff's and the defendant's operations in Costa Rica. With respect to plaintiff's allegation that a wrongful conspiracy resulted in driving it out of business, Mr. Justice Holmes wrote as follows at 213 U. S. 355:

"It is obvious that, however stated, the plaintiff's case depends on several rather startling propositions. In the first place the acts causing the damage were done, so far as appears, outside the jurisdiction of the United States and within that of other states. It is surprising to hear it argued that they were governed by the act of Congress."

Then, in rejecting the plaintiff's theory, Mr. Justice Holmes followed at page 356 by explaining the reasons for applying the law of the place of the tort:

"But the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done. *Slater* v. *Mexican National R. R. Co.*, 194 U. S. 120, 126. This principle was carried to an extreme in *Milliken* v. *Pratt*, 125 Massachusetts, 374. For another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent."

The tort involved in the instant case occurred aboard the Danish vessel while it was moored in Havana, Cuba. There has been no contention made that the tort occurred anywhere else. There is no claim that the tort occurred in the United States.

What, then, is the connection between the happenings aboard the S/S Randa in Havana, Cuba, on October 7, 1946, which should require the application of an American statute? The only connection is the purely fortuitous circumstance that two and one-half months earlier the plaintiff-respondent, a Danish citizen and a resident of Denmark, was temporarily in New York City and signed articles on the Danish form to serve aboard the S/S Randa as an A. B. for a voyage to South America and other places (pretrial order, 16, 44, Defendant's Exhibit A, 44, 45). The articles signed by the plaintiff-respondent bound him to serve aboard the vessel for an indefinite period with the right to leave the vessel on seven days' notice, the owner having a similar right to discharge Larsen on seven days' notice (47).

In answer to any contention that the eventual return of the S/S Randa to New York had any significance, this Court's attention is called to the exchange between the Trial Judge and counsel for the plaintiff-respondent as recorded at pages 48 and 49 of the record, where the Trial Judge indicated that the wording of the pre-trial order did not deal with "scope of the voyage" but merely stated the fact that the vessel finally got to New York.

If the decision of the Court of Appeals in the instant case is to stand as a correct enunciation of a principle of American law, then the result will be that a circumstance, causally unrelated to the occurrence of the tort will disrupt the established principles of the conflict of laws and make the site of the tort totally irrelevant with respect to the remedy available.

Application of the law of the site of the tort will bring about uniformity of remedy, and it is this uniformity

which has caused courts the world over to recognize and develop this basic principle. It would seem desirable that foreign seamen, signing articles drawn in accordance with the law of their own nationality and the law of the flag of the vessel, should be compensated equally for injuries occurring aboard that vessel, and that their recovery should be measured in accordance with the economic and social standards of their common country, regardless of the fact that one of them may have signed articles on the Danish form in the United States, whereas the other may have signed similar articles in a foreign port.

If two alien seamen aboard a foreign vessel should sustain simultaneous injuries aboard that vessel due to the same negligent cause, then under the rulings of the Court of Appeals, the one who signed articles in other than a United States port would be entitled to the benefits of the foreign law, the law of the place of the tort, and could not proceed under the Jones Act, whereas the one who signed on in a United States port would be entitled to recover under the terms of the law of the place of the tort and could, in addition, proceed in the courts of the United States under the Jones Act. This difference in the nature of and the amount of the remedy available to these two seamen would all be attributable to the purely fortuitous circumstance that one of them was temporarily in the United States at the time he joined the vessel, whereas the other was not. Yet these two men signed the same articles, agreed to be bound by the same terms, were subject to the same discipline, and in every way lived the same lives and were exposed to the same hazards.

To give effect to the holding of the Court of Appeals in this case is to open the door to inequality of treatment aboard a single vessel almost unlimited in its possibilities.

POINT III

Matters arising between a foreign shipowner and a foreign seaman aboard a foreign vessel beyond the continental limits of the United States which affect only the internal economy and discipline of the vessel should be governed by the law of the flag in accordance with accepted law and custom.

This action is one by a Danish seaman against the Danish owners of a Danish ship to recover for injuries sustained aboard that Danish ship while moored in Havana, Cuba. Two and one-half months before the date of the injury, the seaman had signed articles on the Danish form in New York (Defendant's Exhibit A, 44, 45), calling for a voyage to "South America and further" (pre-trial order, 16). As shown in the statement of facts herein, the Danish seaman recovered from the Danish shipowner all the benefits to which he was entitled by the terms of the articles which he signed. These benefits consisted of all necessary hospitalization expenses in Havana (pre-trial order, 16, 35, 49), free transportation from Havana to New York (pre-trial order, 16, 37), free hospitalization at the United States Marine Hospital on Ellis Island (pre-trial order, 16, 37, 49), free out-patient treatment at the Long Island College Hospital (pre-trial order, 16, 39, 49), maintenance and subsistence from December 10, 1946, the date he was discharged from the United States Marine Hospital at Ellis Island, until Dec. 30, 1946 (90). During the course of the medical treatment in New York, the petitioner offered the plaintiff-respondent free transportation to Denmark for such further treatment as might be necessary, but this offer was refused (50). In addition, the plaintiff-respondent received all wages due him up to the date of the accident (pre-trial order, 16, 39), and also received the seven days' wages to which he was entitled under the Danish Maritime Law (39-40, Defendant's Exhibit D, 90-92).

As has been pointed out, the articles which were signed by the plaintiff-respondent in New York to serve aboard

the Danish vessel stated that each crew member, including the plaintiff-respondent, was employed in accordance with, and subject to the provisions set forth in the Danish Seamen's Law (Defendant's Exhibit A, 44, 45),[1] and since the plaintiff-respondent was fully able to read Danish (46), there can be no question raised as to his understanding of the conditions of his employment.

There is nothing in the record to indicate the extent of the voyage for which the plaintiff-respondent signed on beyond the terms of the articles which called for a voyage to "South America and other places". It has been contended from time to time during the course of this proceeding, and most recently on page 2 of plaintiff-respondent's brief in opposition to the petition for a writ of certiorari, that these articles were invalid by reason of the indefinite nature of their terms. It should be pointed out, however, that foreign articles have never been held void by our courts. While articles such as were signed here would, according to plaintiff-respondent, be invalid as applied to an American crew signing on an American vessel in American waters, still, it has never been contended that the statutes relating to the form of articles should apply to foreign vessels, such as the s/s Randa, signing on foreign seamen in American ports. No cases or authorities have been cited to show that articles, such as were signed here are void, which is some proof in itself that the policy of Congress and our courts has been that American statutes are not to be construed to apply to the internal affairs of foreign vessels in the absence of a definite expression of that purpose from Congress. It is a recognition of the fact that there are certain matters which should more properly be left to be dealt with by the provisions of the law of the flag of the vessel.

It is submitted that on the facts of this case the liability of the petitioner, the Danish employer to the Danish seaman, should likewise be governed by the law of the

[1] See stipulation of parties on English translation of portions of Defendant's Exhibit A, filed in this Court November 24, 1952.

flag, the law of Denmark, since a matter arising between a Danish shipowner and a Danish seaman on board a Danish ship in a foreign port is, as to the United States, a matter relating purely to the internal economy or discipline of that vessel.

The criterion to be used in determining whether to apply the law of the port or the law of the flag with respect to events occurring aboard a foreign vessel was enunciated by the Supreme Court of the United States in 1887 in *Wildenhus's Case,* 120 U. S. 1, 7 S. Ct. 385, 30 L. Ed. 565. This involved the question of jurisdiction over an altercation between two Belgian seamen aboard a Belgian vessel, moored in Jersey City, New Jersey. As a result of the affray, one of the Belgians sustained a mortal wound, from which he afterwards died. Mr. Chief Justice Waite delivered the opinion of the Court and pointed out that under the law of civilized nations a merchant vessel of one country entering the port of another for the purposes of trade, normally subjected itself to the law of the place where it went, so that it owed temporary and local allegiance to the jurisdiction of the country. As to this general principle, however, he was careful to draw a distinction between internal discipline, rights and duties of the crew towards the vessel, all of which, he said, should be governed by the law of the flag, and, on the other hand, those matters which would affect the peace or dignity of the port, and drew this distinction in the following language (at page 12):

> "From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel

belonged as the laws of that nation or the interests of its commerce should require. But if crimes are committed on board of a character to disturb the peace and tranquillity of the country to which the vessel has been brought, the offenders have never by comity or usage been entitled to any exemption from the operation of the local laws for their punishment, if the local tribunals see fit to assert their authority."

This same principle was again enunciated by this Court in *United States* v. *Rodgers*, 150 U. S. 249, 14 S. Ct. 109, 37 L. Ed. 1071 (1893). Here it was held in an opinion by Mr. Justice Field that the courts of the United States had jurisdiction to try a person for an assault with a dangerous weapon, committed on a vessel belonging to a United States citizen, when that vessel was in the Detroit River, outside the jurisdiction of any particular state, but within the territorial limits of the Dominion of Canada. In so holding, Mr. Justice Field pointed out that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another nation, was not necessarily wholly exclusive, but in defining the limits of the exemption from local law, he wrote as follows (at p. 265):

"But, nevertheless, the law of nations, as I have stated it, and the statutes of governments founded on that law, as I have referred to them, show that enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships not only over the high seas, but into ports and harbors, or wheresoever else they may be water-borne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof, and that, to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation herself."

Earlier at page 260 Mr. Justice Field wrote:

"The general rule is that the country to which the vessel belongs will exercise jurisdiction over all matters affecting the vessel or those belonging to her, with-

out interference of the local government, unless they involve its peace, dignity, or tranquillity, in which case it may assert its authority."

A similar situation is found in *Grand Trunk Ry. Co.* v. *Wright*, 21 F. (2d) 814 (6th Cir., 1927), aff'd 278 U. S. 577, 73 L. Ed. 516, 49 S. Ct. 176. This involved an injury resulting in death suffered by an employee on board a train ferry in American territorial waters, the ferry being of American registry, but having been chartered to defendant railroad, a Canadian corporation. The Court declared that the liability asserted rested upon the relationship of master and servant between a Canadian corporation and a Canadian resident, and was to be performed under the supervision of the defendant's corporate officers in Canada or in adjacent international waters. The Court held that the negligence involved was incidental to the internal discipline and management of the boat and that the Canadian Death Act was applicable rather than the Michigan Death Act or the Federal Employers' Liability Act, even though the act of negligence had taken place in United States waters.

It is submitted that the liability of the petitioner towards Larsen for the accident occurring aboard the Danish vessel S. S. Randa while in the port of Havana, Cuba, related only to the "internal economy and discipline" of the vessel, and for that reason should be governed by the law of the flag and should not call for the extraterritorial application of the statutes of the United States just because the articles signed by Larsen were entered into in New York. The only connection between the United States and the facts of this case is that Larsen was temporarily in New York at the time he signed aboard the vessel. That this fortuitous circumstance should entitle him to proceed in the United States Courts to recover from the Danish shipowner for an injury in Havana, Cuba, is to stretch extraterritorial application of our statutes to the breaking point.

Support for the contention of the petitioner that the "law of the flag" doctrine is still very much alive, can be found in *Kyriakos* v. *Goulandris*, 151 F. 2d 132, 1945 AMC 439 (2 Cir. 1945) and *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597 1950 AMC 352 (2 Cir. 1950), cert. den. 341 U. S. 915, 71 S. Ct. 736, the very two cases relied upon by the Court of Appeals for the 2nd Circuit in affirming the judgment of the Trial Court herein. In *Kyriakos* v. *Goulandris*, supra, Kyriakos, a Greek seaman who signed on a Greek vessel then in the United States, for a voyage to England and back to the United States, sought recovery for injuries sustained ashore at the hands of a fellow crew member while the vessel was in the port of Fernandina, Florida. In the majority decision Judge Augustus Hand set forth the rule as follows (at page 138):

> "It is true that in the absence of any statute, liability for a tort committed on board a vessel while the vessel is in the territorial waters of a state is determined, if it affects only the internal economy or discipline of the vessel, by the law of the state whose flag the vessel flies. American Law Institute Conflict of Laws § 405."

That this was the accepted rule in the Second Circuit as to matters relating to the internal economy or discipline of the vessels, finds further support in the dissenting opinion of Judge Learned Hand, when he stated at the beginning of his opinion (at page 139):

> "As my brothers agree, it is generally accepted law that in all matters relating to 'the internal economy or discipline' of a ship 'the law of the flag' controls. I have gathered in the margin * a number of decisions

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* "*The Scotland*, 105 U. S. 24, 26 L. Ed. 1001; *The Belgenland*, 114 U. S. 355, 5 S. Ct. 860, 29 L. Ed. 152; *United States* v. *Rodgers*, 150 U. S. 249, 14 S. Ct. 109, 37 L. Ed. 1071; *Cunard S.S. Co.* v. *Mellon*, 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306; *Thompson Towing & Wrecking Association* v. *McGregor*, 6 Cir., 207 F. 209, 217-219; *Rainey* v. *New York & P. S.S. Co.*, 9 Cir., 216 F. 449, 454, L. R. A. 1916A, 1149; *The Hanna Nielsen*, 2 Cir., 273 F. 171; *Grand Trunk R. Co.* v. *Wright*, 6 Cir., 21 F. (2d) 814; *Cain* v. *Alpha S.S. Corp.*, 2 Cir., 35 F. (2d) 717."

which invoke this principle in varying applications; nobody disputes it; and it seems to me most undesirable, except for some pressing reason of domestic policy, to disregard it. It is a hardship to owners, and it may be to seamen, to have their legal relations depend upon the accident of the port of call at which the ship puts in; it is impossible to adjust affairs to constantly shifting standards, some of which will favor one party, some another. Moreover—and this, I think, we should treat most seriously—it must often be irritating to the state of the flag for the state of a port of call to insist that its own notions of what is just between owner and crew shall supersede those satisfactory to the first state."

In *Taylor* v. *Atlantic Maritime Co.*, supra, Taylor, a Panamanian citizen, sought recovery for aggravation of tuberculosis sustained aboard the s/s Atlantic Air, from the Panamanian shipowner, Taylor having signed articles in Norfolk, Virginia. Both this case and the *Kyriakos* case will be discussed more fully under Point IV of this brief. In the *Taylor* case Judge Learned Hand delivered the opinion of the Court and set forth the rule in the following terms (page 598):

"Under the ordinary convention, if a seaman is injured on the high seas, his rights are the same as though he had been injured within the country of the ship's flag;[7] unless the owner be American.[8]"

As to the use of the terms "It is true that in the absence of any statute," in *Kyriakos* v. *Goulandris, supra,* and "Under the ordinary convention," in *Taylor* v. *Atlantic Maritime Co., supra,* it has been indicated above under Point I that Section 33 of the Merchant Marine Act of 1920, known as the Jones Act, does not make the provisions of that section applicable to foreign seamen serving aboard foreign ships who are injured outside United States waters.

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[7] "*The Hamilton*, 207 U. S. 398, 28 S. Ct. 133, 52 L. Ed. 264; *Cunard S.S. Co.* v. *Mellon*, 262 U. S. 100, 123, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306."

[8] "*Gerradin* v. *United Fruit Co.*, 2 Cir., 60 F. 927."

In *Sonnesen* v. *Panama Transport Co.*, 298 N. Y. 268, 82 N. E. (2d) 569 (1948) cert. den. 337 U. S. 919, 69 S. Ct. 1157, Sonnesen, a Danish seaman, sought to recover under the Jones Act from the Panamanian owner for aggravation of tuberculosis based on the fact that he had signed articles in New York. In denying the plaintiff recovery under the Jones Act, Judge Desmond, in a unanimous opinion, wrote as follows (p. 267):

> "The general rule of maritime law is that tort liability on the high seas is determined by the law of the flag (*O'Neill* v. *Cunard White Star*, 160 F. 2d 446; see *Resigno* v. *Jarka Co.*, 248 N. Y. 225, 230; Robinson on Admiralty, pp. 238-239), which, in this case, is the law of Panama."

The opinion of Judge Learned Hand in *O'Neill* v. *Cunard White Star, Ltd.*, 160 F. (2d) 446, 1947 A. M. C. 505 (2 Cir., 1947), is extremely significant on this point. It should be noted that Judge Learned Hand wrote this opinion after he had been overruled by the majority in *Kyriakos* v. *Goulandris, supra,* but before he wrote the opinion in *Taylor* v. *Atlantic Maritime Co., supra.* In this case the Court denied Jones Act relief to the administratrix of a British seaman injured on the high seas, the seaman having signed articles in Britain to serve aboard a British vessel—this, even though the deceased had been a long-time resident of the United States. Judge Learned Hand discussed the holdings of the prior cases (including the *Kyriakos* case) in the same Court on the question of the application of the Jones Act to foreign seamen serving aboard foreign vessels and wrote as follows (at page 448):

> "The three decisions we have mentioned do not help us to decide whether we should now hold that the Jones Act interposes to change what would otherwise be the rights and duties of the parties, because *in all three the act or omission was within our waters.* In each the question was whether an act of Congress, at least literally applicable to the situation, should yield to the doctrine that so far as concerns the 'in-

ternal economy' of a foreign ship, the law of the flag applies while she is in a foreign port * * *. In the case at bar the situation is just reversed: we are to say, not when the Jones Act should give place to the law of the flag, but *when the law of the flag should give place to the Jones Act in places where the Jones Act does not expressly apply.*" (Emphasis supplied.)

After writing this opinion in *O'Neill* v. *Cunard White Star Line, Ltd., supra*, in which he held that there was nothing in the language of the Jones Act to indicate that it was to be applied to injuries occurring on the high seas, Judge Learned Hand followed, in 1950, with the opinion in *Taylor* v. *Atlantic Maritime Co., supra*. In discussing, in the latter case, the law of the flag, the Jones Act and foreign seamen, Judge Learned Hand wrote as follows (at page 598):

> "When a seaman signs articles in a foreign port for service on an American ship, and is injured on the high seas, there is no embarrassment, whether one regards the claim as sounding in tort, or in contract. So far as it sounds in tort, it depends upon American law—the law of the flag—; so far as it sounds in contract, although the law of the place where the contract is made will ordinarily apply, it is a well-recognized exception that in all that concerns the 'internal economy' of the ship the law of the flag controls.[9]"

Judge Hand has stated, in effect, that the seaman who signed on an American vessel in a foreign port will be governed by the law of the flag if his claim sounds in tort, and that if his claim sounds in contract, an exception to

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[9] "*The Scotland*, 105 U. S. 24, 26 L. Ed. 1001; *The Belgenland*, 114 U. S. 355, 5 S. Ct. 860, 29 L. Ed. 152; *United States* v. *Rodgers*, 150 U. S. 249, 14 S. Ct. 109, 37 L. Ed. 1071; *Cunard S.S. Co.* v. *Mellon*, 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306; *Thompson Towing & Wrecking Ass'n* v. *McGregor*, 6 Cir., 207 F. 209; *Rainey* v. *New York & P. S.S. Co.*, 9 Cir., 216 F. 449, L. R. A. 1916A, 1149; *The Hanna Nielsen*, 2 Cir., 273 F. 171; *Grand Trunk R. Co.* v. *Wright*, 6 Cir., 21 F. 2d 814; *Cain* v. *Alpha S.S. Corp.*, 2 Cir., 35 F. 2d 717."

the law of the place where the contract was made will still cause the law of the flag—that is, American law—to apply. Logically, it should follow, if the same rule were applied to a foreign seaman signing on a foreign ship in a United States port, that if the claim sounds in tort, the law of the foreign flag will apply, and if the claim sounds in contract, that same exception to the law of contract should apply and the law of the flag—the foreign law—should be applied to that claim.

That is the substance of petitioner's argument—i.e., that as to matters within the "internal economy" of the vessel, the law of the flag and the law of the place of the injury predominate over the law of the place where the hiring contract was made.

The question of local interference in domestic affairs of vessels engaged in international trade is a two-way street. If we are to concede that the internal affairs of a foreign vessel outside a United States port are to be governed by United States law, then we must be prepared to admit that our own vessels may also be subject to local interference at every foreign port of call.

If the decision of the United States Court of Appeals is affirmed, it will be tantamount to the decision of a major maritime power to abandon this basic conflict of laws rule for maritime cases and as such it is certain to have repercussions in the policies and laws of other countries. If the country in which a foreign seaman signs articles to serve aboard a foreign ship insists upon applying its own domestic law to torts occurring in any part of the world, there will undoubtedly follow considerable pressure on the part of other governments to apply to American vessels calling at their ports, their concept of the social benefits to which they deem a seaman to be entitled.

The entire framework upon which international trade has been built will have been abrogated, in that the internal affairs of a ship will no longer remain subject to the laws of the country whose flag that vessel flies.

It is not contended on behalf of the petitioner that the law of the flag is a sacred doctrine superior to the law of our land in all instances as might perhaps be supposed. It is urged, however, that whenever there is a conflict between the law of the flag and the law of the forum, the determination as to which shall be paramount, hinges upon whether the matter involves the internal rights and duties of the crew towards the vessel, or whether it is a matter which so affects the peace and tranquillity of the forum as to require the application of the law of that forum.

If the decision of the Court of Appeals for the Second Circuit in the present case is deemed to remove inequality among seamen, as has been urged from time to time on behalf of plaintiff-respondent, it certainly will have the very opposite effect, and will result in discriminatory treatment among Danish seamen on board Danish vessels. The discriminatory treatment would result from the fact that, although all the seamen on board signed and subscribed to the same form of articles, those who signed on in the United States would, under the ruling of the Court of Appeals, have the double protection of the Danish law and of the Jones Act, whereas Danish seamen signing on in a foreign port would only have the protection of the Danish laws.

With the collapse of the international principle that the internal affairs of a ship are to be subject only to the laws of one country, other countries would no doubt follow by imposing their notions regarding proper working conditions and proper terms as to those seamen signing on in their ports, regardless of the nationality of the seamen or the nationality of the vessels. As a result, it is not hard to foresee that a shipowner may be faced with many different standards of liability and responsibility towards the seamen on his vessel, even though all such seamen might be of the same nationality as the vessel. The trend towards regulation of international shipping by treaties and conventions rather than by such unilateral legislation stems

directly from a realization of the impossibility of complying with such varying standards.

This accepted doctrine, that the law of the flag should apply as to those matters within the internal economy and discipline of a ship has been fostered and clung to as the only practical solution for vessels engaged in international trade, who, in the course of a single year, may call at dozens of different ports. Application of the law of the flag to such matters lends a certainty and uniformity which is essential both for the operation of the ship and for the security and welfare of the members of the crew.

With respect to the facts herein, that is, a Danish shipowner operating a Danish vessel in international trade, who may be required to hire seamen at any one of a number of ports in order to replace those who have signed off or those who, by reason of illness, are unable to continue, the desirability of the application of the law of the flag to employer-employee relationships is clear:

The Danish shipowner operating a vessel under the Danish flag is subject at all times to the provisions of the Danish law, both with respect to the operation of his ship and with respect to payment into the government insurance fund to provide for the payment of compensation to injured seamen. This Danish shipowner is unable to avoid these responsibilities regardless of the scene of the operations of his vessel. Regardless of where the ship might be, the seamen aboard are guaranteed certain fundamental rights and benefits. For that reason they subscribe to the Danish Seamen's Act at the time they sign articles. Such a signing is a two-way operation. Not only does the seaman agree to be bound on his part by the Danish law, but at the same time, and this should be remembered, the Danish shipowner contracts with the seaman on his part to carry out all his responsibilities and to provide to the seaman all the benefits to which he is entitled under the various provisions of the Danish law. The benefits of these laws are uniformly available wherever a Danish consulate exists (21).

The master of the Danish vessel is continually under the supervision of the Danish consulate at every port of call, and it is the responsibility of the consuls to enforce the Danish law with respect to those vessels.

If the mere fact of a sign-on in the United States is sufficient in and of itself to give to a seaman rights under the United States Jones Act, regardless of the site of the injury and regardless of the lapse of time between the sign-on and the injury, then how is that seaman going to enforce his rights under the United States law? Are the remedies available to him to be dependent upon his return to the United States in order to start an action in a District Court? What if the man were totally disabled and unable to leave his native land to prosecute his cause of action in our country?

Compare to these uncertainties the fact that a Danish seaman can obtain a recovery for injuries sustained, regardless of any negligence on the part of the shipowner or its agents or employees, not only in Denmark but before any Danish consul anywhere in the world. The recovery under the law of the flag is a recovery which is sure, universally available, enforceable regardless of any return to the United States, and one that cannot be avoided by the shipowner since he, too, is bound by the law of the flag to carry out his obligation.

POINT IV

The facts in this case are not governed by the decisions of the Court of Appeals for the Second Circuit in *Kyriakos* v. *Goulandris* or *Taylor* v. *Atlantic Maritime Co.*

Upon the trial of this case in the United States District Court for the Southern District of New York motions were made on behalf of the defendant at the end of plaintiff's case, at the end of defendant's case and after the jury

verdict to dismiss the complaint for lack of jurisdiction, and all were denied by the Trial Court (61, 97, 116 and 117). These motions were made on the grounds that this was an action between citizens of Denmark and, therefore, outside the jurisdiction of the Court and outside the framework of the Jones Act. The Trial Court also denied defendant's request to charge that the jury must find for the defendant if it found that the defendant had fulfilled its obligations under the Danish law (113), and the defendant excepted to the charges of the Trial Court that the defendant was liable to the plaintiff for injuries caused by the negligence of defendant's officers and seamen (113) no such right being given by the Danish law, and the charge that the Danish law had no application in the case (114-115).

Thereafter, the defendant, the petitioner herein, J. Lauritzen, appealed from the judgment in favor of the plaintiff as entered on December 21, 1951, and in particular from the denial of the above motions made by the defendant as well as from the above denial of defendant's requests to charge and from the charges of the Trial Court to the effect that American law, rather than Danish law, was to be applied. The United States Court of Appeals for the Second Circuit affirmed the judgment of the Trial Court solely on the authority of *Kyriakos* v. *Goulandris*, 151 F. (2d) 132, 1945 A. M. C. 439 (2 Cir., 1945) and *Taylor* v. *Atlantic Maritime Co.*, 179 F. (2d) 597, 1950 A. M. C. 352, (2 Cir., 1950) cert. den. 341 U. S. 915, 71 S. Ct. 736.

It is submitted that the facts in this case are such that they are not governed by the decisions in *Kyriakos* v. *Goulandris, supra, and Taylor* v. *Atlantic Maritime Co., supra*, but that they require an independent ruling as to the applicability or non-applicability of the Jones Act. In addition, it is submitted that the holdings and the decisions of the Court of Appeals for the Second Circuit in both *Kyriakos* v. *Goulandris* and *Taylor* v. *Atlantic Maritime*

Co. were at least in part erroneous in that they have extended the application of the Jones Act beyond its intended field.

Since the Court of Appeals for the Second Circuit in a *per curiam* opinion has seen fit to affirm the judgment of the Trial Court based solely on a citation of these two decisions, a close examination of the authorities is warranted.

In 1937 in *The Paula*, 91 F. (2d) 1001, 1937 A. M. C. 988, cert. den. 302 U. S. 750, 58 S. Ct. 270, the United States Court of Appeals for the Second Circuit affirmed the District Court decree in a case involving a German seaman who had signed articles in Chile to serve on a Danish ship on a voyage to Brooklyn, New York. While the vessel was at the intermediate port of Jacksonville, Florida, the libelant was injured during the performance of his duties on board the ship. The District Court declined jurisdiction and relegated the seaman to his claim under Danish law before the Danish consul. In disposing of libelant's claim that the District Court had jurisdiction under Section 33 of the Merchant Marine Act of 1920, Judge Swan wrote (pp. 1003, 1004):

> "The libelant claims not only under the maritime law but also under section 33 of the Jones Act (46 U. S. C. A. § 688). He asks us to rule that this applies to an alien seaman on a foreign ship who signed on at a foreign port, if he sustains injury in a port of the United States through the negligence of a fellow seaman. This question was expressly left open in Plamals v. Pinar Del Rio, 277 U. S. 151, 155, 48 S. Ct. 457, 72 L. Ed. 827. Precise authority on it is meager. Such as there is has answered the question in the negative. The Seirstad, 27 F. (2d) 982 (D. C. E. D. N. Y.); The Magdapur, 3 F. Supp. 971 (D. C. S. D. N. Y.). * * * We think the intention to legislate for alien seamen who have signed articles abroad on a foreign ship ought to be clearly expressed before the courts extend the statute to them."

With respect to the libelant's recovery under the Danish law, the opinion reads as follows (at p. 1003):

> "It is not disputed that the Danish law gives the libelant a right to medical expenses for a limited period (which the respondent has already satisfied) and a right to compensation for injuries from a governmental insurance fund, out of which payment may be obtained in the United States by presentation of a claim to the Danish Consul. These rights are substitutes for maintenance and cure and the right to indemnity recognized by the general maritime law, and the substituted remedy is available in New York where the alien and his witnesses are present; hence no injustice results from leaving him to that remedy."

In 1942, in *Gambera* v. *Bergoty*, 132 F. (2d) 414, 1943 A. M. C. 45; cert. den. 319 U. S. 742, 63 S. Ct. 1030, 87 L. Ed. 1699, the United States Court of Appeals for the Second Circuit modified the doctrine of *The Paula* to the extent that relief under the Jones Act was granted to an Italian seaman injured on board a Greek ship in territorial waters of the United States. In denying the respondent's motion to dismiss the libel in the District Court, Judge Coxe commented on the facts in the following terms (39 F. Supp. 871):

> "The affidavits submitted on behalf of the libelant show that he is an Italian, who has resided since 1920 in the United States. He served in the United States Army in 1927 and 1928, receiving an honorable discharge on March 12, 1928, and in 1937 filed his first papers for naturalization as a United States citizen. He was hired by the captain of the S.S. Emmy at Trenton on December 21, 1939, for a voyage to Philadelphia and Norfolk, and thence to New York, where he was to be discharged. The injury took place on December 23, 1939, as the vessel was proceeding from Trenton to Philadelphia. * * * He has never been in Greece, does not speak the language, the witnesses are here, and it would be a clear denial of justice if he were required to go to Greece to litigate his claim."

That the United States Court of Appeals for the Second Circuit, in affirming the denial of respondent's motion to dismiss, considered the locus of the voyage and the citizenship status of the libelant significant, is shown by the language of Judge Learned Hand (132 F. (2d) 415):

> "Not only had the libelant been domiciled in the United States for over twenty years, during the greater part of which he had served on American ships, but the voyage began and ended in the United States; it was from Trenton to Philadelphia, Norfolk and New York, and he was injured on the leg between Trenton and Philadelphia. The whole voyage was thus to be performed within our territorial waters except possibly for a part of the leg between Norfolk and New York. *That presents a wholly different situation from any that have hitherto arisen.*" (Emphasis supplied.)

Judge Learned Hand held that Gambera's libel stated a good claim *in personam* which should be tried on the merits. The doctrine of *The Paula,* therefore, was modified, but only to the extent that relief was granted because of the pseudo-United States citizenship of the libelant, because the voyage began and ended within the territorial limits of the United States, and because the injury occurred within United States waters.

Even after the decision in *Gambera* v. *Bergoty, supra,* it had never yet been held that the terms of the Jones Act were applicable to an injury sustained by a bona fide alien serving aboard a foreign vessel, quite irrespective of the place of the injury.

The first deviation from this principle and from the accepted interpretation of the intended application of the Jones Act occurred in the decision of the United States Court of Appeals for the Second Circuit in *Kyriakos* v. *Goulandris, supra,* in 1945.

Kyriakos, a citizen of Greece, was employed as a fireman aboard the S.S. Theomitor, and sued to recover for injuries sustained as a result of an assault by a fellow seaman in April, 1942, in Fernandina, Florida. He asserted causes of

action for cure, maintenance and wages to the end of the voyage, and, under the Jones Act, for damages arising from the negligence of the respondents, their servants and employees. The articles signed by Kyriakos in New York City in March, 1941, called for a voyage from Newport News to England and back to the United States. Kyriakos was engaged along with several others at the office of the Greek Line in New York, pursuant to orders received from the captain of the vessel. The Greek Line paid the expenses of his transportation to Newport News, where he joined the ship. The Trial Court, in an opinion by Judge Bondy, awarded Kyriakos the sum of $17,500 as damages, holding that Kyriakos was entitled to maintain his action under the Jones Act. The reasons for this decision are set forth in the opinion of Judge Bondy (63 F. Supp. 19, 20):

> "The libellant is a citizen of Greece. He was assaulted at Fernandina, Florida, by a fellow seaman while serving as a fireman on the *Theomitor*, a vessel flying the flag of Greece and owned in Greece by the respondent Michael Polemis.
>
> The libellant was hired for a voyage from Newport News, Virginia to England and back to the United States.
>
> The fact that the libellant was an alien seaman serving upon a foreign ship owned and operated by aliens does not deprive him of the right to maintain this action under the Jones Act, in view of the fact that he resided in the United States, that he was injured within territorial waters of the United States while in the service of the ship on a voyage that began and was to end in the United States. *Gambera* v. *Bergoly*, 2 Cir., 132 F. (2d) 414, certiorari denied 319 U. S. 742, 63 S. Ct. 1030, 87 L. Ed. 1699; See *Uravic* v. *Jarka Co.*, 282 U. S. 234, 239, 51 S. Ct. 111, 75 L. Ed. 312. Compare *The Paula*, 2 Cir., 91 F. (2d) 1001."

Subsequently, the respondents appealed from the judgment of the trial court to the United States Court of Appeals for the Second Circuit. On the appeal it was contended by the appellants that Kyriakos could not sue

under the Jones Act, because it gave no remedy to an alien employed on a foreign ship. The Court of Appeals for the Second Circuit, in an opinion by Judge Augustus Hand, could find nothing in the record to support the statement of Judge Bondy that the libelant was a resident of the United States, since Kyriakos had testified that he had come to this country as a seaman and had signed off the vessel which had brought him to the United States because it was undergoing repairs. On this point, Judge Augustus Hand wrote as follows (151 F. (2d) 136):

> "He had been here for an unspecified period, which was certainly less than three months, when he signed on the *Theomitor*. His stay in this country since his injuries were sustained is not sufficient, under all the circumstances, to show that he had acquired a residence in the United States when he signed on which would give him a right of action under the Jones Act. *Gambera* v. *Bergoty*, 2 Cir., 132 F. (2d) 414, certiorari denied 319 U. S. 742, 63 S. Ct. 1030, 87 L. Ed. 1699."

After conceding in this manner that the facts of the case were not such as to fall within the holding of *Gambera* v. *Bergoty, supra*, Judge Augustus Hand framed the question presented to the Court in the following terms (at p. 136):

> "We are thus called upon to determine whether an alien seaman who signed on in an American port for a voyage beginning and ending in American waters can sue under the Jones Act."

The opinion of the Court then followed with a reference to *Strathearn S.S. Co. v. Dillon*, 252 U. S. 348, which has been discussed in this brief under Point I. The majority concluded, on the authority of *Patterson* v. *Bark Eudora*, 190 U. S. 169, and *Strathearn S.S. Co.* v. *Dillon, supra*, that Congress undoubtedly had authority to make a statute such as the Jones Act applicable to foreign vessels in our ports.

In answer to the question posed as to what the Court was called upon to determine, Judge Augustus Hand wrote as follows (at p. 137):

> "In the instant case the libelant signed on in an American port, *and he was injured in an American port*. We think this is sufficient both on reason and on authority. The intention of Congress to benefit American seamen would not be served by a contrary construction of the statute, since it would tend to encourage the hiring of foreign seamen *in American ports* in preference to American seamen because the aliens would not have the right of suit against their employers *if injury should occur in those ports*, while American seamen would." (Emphasis supplied.)

The discrepancy between the framing of the question presented to the Court, as set forth on page 136, and the answer, as set forth on page 137 of the opinion in 151 F. (2d), should be noted. The opinion states that the Court was called upon to determine whether an alien seaman who signed on in an American port for a voyage beginning and ending in American waters could sue under the Jones Act. But the answer, as set forth on page 137, makes much of the fact that the injury itself took place in an American port.

There is nothing in the opinion of the majority to indicate that the holding would have been the same had Kyriakos been injured either on the high seas or in a foreign port.

It is submitted that the court begged the issue in citing the *Strathearn* and *Patterson* cases as authority for their conclusion. As has already been pointed out, both these cases dealt with the constitutionality of sections already made specifically applicable to foreign vessels. The court totally ignored the fact that the Jones Act contains no such provision.

An extremely strong dissent to the opinion of the majority was written by Judge Learned Hand and is reported at 151 F. (2d) 139-140. Judge Learned Hand opened by

discussing the principle of the law of the flag in a portion of the dissent already quoted at pages 42-3 of this brief. With further reference to the doctrine of the law of the flag and its possible exceptions, Judge Learned Hand wrote as follows at page 139:

> "There are occasions, of course, when the state of the port has an overriding interest in insisting upon its own ideas; but in the case at bar the question does not touch a breach of our peace, or, as I shall try to show, an object in which it can be supposed that we have any interest. If so, I submit that we should demand the clearest warrant before we substitute the Jones Act—primarily at any rate a local statute—for the pertinent law of Greece.
>
> As I have just said, I can discover no reason of policy or of authority for displacing that law."

Then on page 140 Judge Learned Hand discussed the two cases relied upon by the majority in support of their opinion as follows:

> "My brothers' main reliance appears to be Patterson v. The Eudora, 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002 and Strathearn SS Co. v. Dillon, 252 U. S. 348, 40 S. Ct. 350, 64 L. Ed. 607. The second can at once be ruled out. When Congress added to the proviso that 'the courts of the United States shall be open to such seamen for its enforcement', I do not see how the court could escape concluding that foreign seamen were intended. As applied to that statute, unlike the one at bar, there was a good reason for this. * * * As to Patterson v. The Eudora, supra, I agree that it is practically certain that some of the libelants were foreigners. However, the point was not discussed—indeed it was not even alluded to—it does not seem to me that we should treat it as a decision. All the court was really concerned about was whether Congress could constitutionally make the act against crimping seamen apply to foreign ships. * * * Finally, I do not read the opinion in that case as holding that the title of the act is never in any way relevant to its interpretation; on the contrary, all the court meant was that in that particular case the plain language of the act itself forbade the title to be taken as controlling."

The differences in the essential facts of the *Kyriakos* case and the instant case are numerous.

First, Kyriakos signed articles for a voyage from a United States port to England and then back to the United States. Larsen, however, signed articles in a United States port, calling for a voyage to South American ports and further, binding Larsen to serve aboard the vessel for an indefinite period, while at the same time granting him the right to give seven days' notice of his intention to leave the vessel. Nothing in the articles signed by Larsen indicated that the vessel was to return to the United States or that the owner was under any obligation whatsoever to return him to the United States for discharge.

Secondly, Kyriakos was injured ashore in Fernandina, Florida, when he was assaulted by a fellow crew member, who had also been signed on at the same time as Kyriakos. Larsen, on the other hand, was injured aboard the Danish vessel, S.S. Randa, while that vessel was moored in Havana, Cuba. The opinion of Judge Augustus Hand in *Kyriakos* v. *Goulandris, supra,* indicates clearly that the majority was greatly swayed by the fact that the injury to Kyriakos had occurred in a United States port.

Thirdly, there is nothing in the opinions to indicate that Kyriakos received any benefits or obtained any recovery under the Greek law, the law of the flag. As a matter of fact, at the time of the injury, Greece itself was in the hands of the German occupation forces, having been so since 1941, and whatever Greek government was in power at the time was, at best, a government in exile with no authority within its own country. Larsen, however, did recover all the benefits to which he was entitled under the terms of the Danish seamen's law and under the terms and conditions of the articles which he had signed on the Danish form. In addition, as has been pointed out under the Statement, there were available to Larsen additional medical benefits, if such had been required, in Denmark, but Larsen refused the offer of repatriation. Repatriation in the case

of Kyriakos was obviously impossible. In short, Kyriakos had no remedy available to him other than under the United States law.

The chasm existing between the instant case and *Kyriakos* v. *Goulandris, supra,* is supported by the opinion of Judge Learned Hand in *O'Neill* v. *Cunard White Star, Ltd.,* 160 F. (2d) 446, 1947 A. M. C. 505 (2 Cir., 1945). The United States Court of Appeals for the Second Circuit, in an opinion by Judge Learned Hand, stated that the provisions of the Jones Act did not appear to be applicable to an injury sustained on the high seas. In deciding whether the Jones Act was applicable to a British seaman injured on the high seas aboard a British vessel, the opinion discussed the cases of *The Paula, supra, Gambera* v. *Bergoty, supra,* and *Kyriakos* v. *Goulandris, supra,* and with respect to these three cases wrote as follows (160 F. (2d) 448):

> "The three decisions we have mentioned do not help us to decide whether we should now hold that the Jones Act interposes to change what would otherwise be the rights and duties of the parties, because in all three the act or omission was within our waters."

The very same argument must be applied here, for Kyriakos was injured in a United States port, whereas Larsen was injured aboard the vessel in a foreign port, and if the *Kyriakos* case did not help the Court decide the *O'Neill* case, it most certainly cannot be cited as authority for the instant one.

The second case relied upon by the United States Court of Appeals for the Second Circuit in affirming the judgment of the Trial Court in the instant matter is *Taylor* v. *Atlantic Maritime Co., supra.*

The decision of Judge Hulbert in the United States District Court for the Southern District of New York on defendants' motion to decline jurisdiction is reported at 86 F. Supp. 496, 1949 A. M. C. 1192, and indicates that Taylor signed articles at Norfolk, Virginia, on August 7, 1947, as

an able-bodied seaman, and continued in the employ of the defendants on the vessel s/s Atlantic Air until November, 1948. The complaint alleged that in March, 1948, Taylor became very sick "through no fault of his own, but entirely through the fault of the defendants, their agents, servants and employees, in failing to furnish him with a safe place in which to work, and to provide him with a safe and seaworthy vessel." It was also alleged in the complaint that the plaintiff was a resident of the City of New York, of Panamanian nationality, and that the defendant Atlantic Maritime Company was a Panamanian corporation, existing under and by virtue of the laws of Panama, doing business through its agent S. Livanos & Co., with an office in the City of New York. In the course of the opinion, Judge Hulbert pointed out that there was nothing in the moving papers to indicate where the vessel went after leaving Norfolk, Virginia, except that in August of 1948 the vessel was in Sydney, Australia. Judge Hulbert granted the motion, and wrote as follows (at p. 498):

> "The Jones Act does not afford protection to 'a seaman of foreign residence and nationality, suing a non-American ship owner for an alleged tort committed on a non-American ship on the high seas.' *Solnesen* v. *Panama Transport Co.*, 298 N. Y. 262, 82 N. E. 2d 569, 570; cf. also *O'Neill* v. *Cunard White Star, Ltd.*, 2 Cir., 1947 A. M. C. 505, 160 F. (2d) 446. The General Maritime Law of the United States is also not applicable to the facts of this case, but rather under familiar principles the law of the flag, viz. Panama, is the law that must be applied. Under these circumstances, this Court should not entertain jurisdiction of this action, but should relegate plaintiff to the appropriate forum in Panama."

Thereafter the plaintiff appealed from this judgment dismissing his complaint, but died before the decision of the United States Court of Appeals for the Second Circuit. The opinion of the Court of Appeals was written by Judge Learned Hand, who had written the very strong dissent

to the *Kyriakos* case and who, in the *O'Neill* case, had held that the provisions of the Jones Act were not intended by Congress to be applicable to injuries sustained on the high seas. The holding of the Court was that the Jones Act was applicable to the recovery sought by the Panamanian seaman against the owners of the Panamanian vessel for the latter's failure to provide proper care and attention aboard the vessel, all of which allegedly led to aggravation of the plaintiff's tubercular condition, the plaintiff having signed articles in Norfolk, Virginia.

Such a short summary, however, of the holding of the Court can in no way convey the sense of reluctance which pervades the entire opinion. In order to convey properly this sense of reluctance, it would be necessary to quote the entire opinion at length, but suffice it to say for the moment that the opinion contains many more arguments for not applying the Jones Act than for reaching the conclusion which the Court eventually did.

Judge Learned Hand outlined the arguments and, from all appearances, seemed to support these negative arguments in the following terms (179 F. (2d) 600):

> "Judge Clark thinks that, since the overriding purpose of the Jones Act is to protect seamen, it should be understood to include alien seamen and that the law of the flag must yield. Indeed, so far as concerns American seamen, we decided as much in Gambera v. Bergoty, supra; and it must be conceded that, if the doctrine there accepted does not extend to aliens who sign articles in an American port, American citizens may be at a disadvantage as against aliens in shipping foreign. To Judge Swan and me it seems, on the other hand, that, *before we impute to Congress the will to change the long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose.* We of course recognize that it is only a question of interpreting the statute, not of power; but the possible consequences of the innovation seem to us to forbid its ready assumption under the facile phrase of the 'policy of the Act.' Nor does the possible disadvantage,

at which our view might put American seamen, seem to us considerable enough to imply such a purpose, for there will be, we should suppose, only rare occasions when American seamen will find themselves forced to accept the greatly inferior standards of wages and living which prevail on most, if not all, foreign ships. Moreover, we both find strong support for our view in the decision of the Court of Appeals in Sonnesen v. Panama Transport Company, which is on all fours with the case at bar." (Emphasis supplied.)

The above language which appears in the closing paragraph of the opinion clearly indicates that Judge Learned Hand, as well as Judge Swan, were unwilling to impute to Congress the will to change the long-settled international understanding that the law of the flag should control in such matters unless they could find a "definite expression of that purpose".

Yet, there follows a startling conclusion which constitutes a complete reversal of the field, for instead of denying the applicability of the Jones Act, which the whole tenor of the opinion up to this point would indicate was the intention, Judge Learned Hand closed as follows (at page 600):

"*Nevertheless, in spite of what we should hold, were we free,* we think that, although Kyriakos v. Goulandris, supra, can be distinguished because the injury took place on shore, the rationale of the opinion went further; and that *it construed the Jones Act as imposing its terms upon all owners who sign on crews in an American port.* We do not think it fitting (especially in my own case) to distinguish that decision *by a circumstance which was not made pivotal;* but rather that we should accept and apply its doctrine as broadly as it seems to have been intended to go. Therefore, though for somewhat different reasons, we all agree that the judgment be reversed, and the action remanded for trial. Since the plaintiff died pending the appeal the suit must be revived under our Rule 9; but when that has been done, the judgment will be reversed." (Emphasis supplied.)

Referring to the earlier language of the opinion, we must conclude that the Court had found a definite expression of the purpose of Congress to change the long-settled international understanding that the law of the flag controlled in such matters. Where did the Court find this definite expression of the will of Congress? They found it, not in any language of the statute, not in any expression of Congress, but in their own decision in *Kyriakos* v. *Goulandris*, while at the same time admitting that the latter case could be distinguished on the grounds that the injury took place ashore in the United States.

How could the Court conclude that a decision holding the Jones Act applicable to a foreign seaman injured in a United States port, constituted a definite expression of the intent of Congress to change the law with regard to an injury sustained by a foreign seaman aboard a foreign vessel while outside the United States?

The closing sentences of the opinion quoted above make it abundantly clear that the Court considered itself bound by its own decision in *Kyriakos* v. *Goulandris*, with the result that it was held that the lone fact that the articles were signed by the foreign seaman in a United States port was sufficient to require the application of the Jones Act to a recovery for illness on the high seas. It should be noted that Judge Learned Hand said that he did not consider it fitting to distinguish *Kyriakos* v. *Goulandris* "by a circumstance which was not made pivotal", referring to the fact that Kyriakos was injured ashore in the United States in the course of a voyage which was to start and terminate in the United States. It is submitted that the fact that Kyriakos was injured in the United States during the course of a voyage starting and terminating in the United States was a definite factor in leading that same Court to hold that the Jones Act was applicable in that case, and there is ample support for this contention in the language of Judge Augustus Hand in the *Kyriakos* case, quoted earlier. That language indicated that the whole decision

in *Kyriakos* v. *Goulandris, supra,* was predicated on the three factors involving the United States, i.e., signing on in the United States, a voyage starting and terminating in the United States, and, finally, injury occurring within the United States. That Justice Learned Hand earlier considered these factors to have been "pivotal" is shown by the fact that in *O'Neill* v. *Cunard White Star, Ltd., supra,* he took pains to distinguish the *Kyriakos* case, since the *Kyriakos* case involved an act or omission committed within United States waters. Why were these distinctions pivotal in 1947, but not in 1950?

Surely, Judge Learned Hand carried the doctrine of *stare decisis* to an extreme in considering himself governed by a decision which, five years earlier, he had considered totally without foundation, authority or desirability. Was he repudiating his own dissent in the *Kyriakos* case?

But even if we were to concede for the purposes of argument that the decision of the United States Court of Appeals for the Second Circuit in *Taylor* v. *Atlantic Maritime Co., supra,* was correct, the differences in the essential facts of the *Taylor* case and the instant case are so numerous as to require a holding that the *Taylor* case is no more authority for a decision on this matter than was *Kyriakos* v. *Goulandris, supra.*

Taylor was a Panamanian national, and it was alleged in the complaint that he was a "resident of the City of New York, State of New York" (86 F. Supp. 496). Larsen, the plaintiff herein, was a Danish citizen and a resident of Denmark, who was temporarily in New York City at the time he signed articles to serve aboard the S.S. Randa (pre-trial order, 16, 44, Defendant's Exhibit A, 44, 45).

At the time Taylor served aboard the S.S. Atlantic Air, she was of Panamanian registry and was owned by Atlantic Maritime Company, a corporation registered in Panama. The history of the vessel, however, indicates that she was the S.S. Elizabeth Blackwell and, until 1947, was owned by the United States War Shipping Administration, having been built in California in 1943. Until 1947, Atlantic

Maritime Company was not listed in Lloyd's Register of Shipping as a shipowner, but after that year Atlantic Martime Company was listed as a Panamanian shipowner, owning ten ships, all of them ships previously owned by the United States War Shipping Administration. Briefs filed on behalf of Taylor's administrator in this Court in opposition to the petition of Atlantic Maritime Company for a writ of certiorari indicate that the true situs of the control and operation of this vessel flying the Panamanian flag was in the United States. Since Taylor's cause of action never proceeded to trial, the exact nature of the operation and control of the S.S. Atlantic Air have not been brought out.

There is nothing in the record and in the final judgment in this case to indicate that the S.S. Randa was not a legitimate Danish vessel flying the Danish flag, registered in Denmark, and owned and operated by the Danish petitioner (pre-trial order, 16).

The *Taylor* case was an action to recover for aggravation of tuberculosis caused by the alleged failure of the shipowner to give the seaman proper care on board the ship. By reason of the nature of the illness, and the length of service of the seaman aboard the vessel, however, there was no specific geographical spot where it could be said that the conduct of the shipowner rendered it liable to the plaintiff, for it must be assumed from what we know that the shipowner's failure to give proper care was a continuous failure extending over the entire period of time that the plaintiff was aboard the vessel. The only geographical spot having any tangible significance, therefore, was the place of sign-on; that is, Norfolk, Virginia. In the instant action, the plaintiff-respondent has obtained a final judgment for a specific incident occurring aboard the owner's vessel while that vessel was moored in Havana, Cuba. Unlike the *Taylor* case, we can now point to specific conduct aboard the S.S. Randa in a specific foreign port where the

shipowner incurred a possible tort liability, and there is no longer any need to refer to the port of sign-on in an effort to resolve the conflict of laws problem.

Although the opinion in the *Taylor* case does not specifically state that Taylor did not recover from the shipowner under the Panamanian law, the law of the flag, the entire tenor of the opinions make it clear that the plaintiff in that case had sought to recover solely under the terms of the Jones Act, and had not proceeded under the terms of the Panamanian articles which he had signed. In the instant case, however, as shown in the Statement, Larsen recovered from the Danish shipowner all the benefits to which he was entitled under the terms of the articles which he had signed and under the provisions of the Danish Seaman's Law. That Larsen accepted all of these benefits is significant in that he had chosen to bind himself by the terms of the articles which he signed as long as they would be of benefit to him, but later sought, in addition, to go outside the terms of these articles in order to recover from the Danish shipowner under the laws of the United States.

Lastly, what was involved in the *Taylor* case was a question of the contractual obligation of the shipowner to care for an ill seaman, whereas in the instant case the question involved is one of whether the tort liability of a fellow-seaman of Larsen's is to be imputed to Larsen's Danish employer.

It is submitted, therefore, that the facts of and the law applicable to the instant case are not governed by the decision of the United States Court of Appeals for the Second Circuit in *Taylor* v. *Atlantic Maritime Co.*, *supra*.

These two decisions have been gone into at some length in order to show the state of confusion and contradiction in the Court of Appeals which led to a total disregard of the authorities and of the possible repercussions of this misapplication of the Jones Act. On the one hand, we have Judge Learned Hand's strong dissent in *Kyriakos* v. *Goulandris*, *supra*, on the grounds that the authorities relied upon by the majority were inapplicable and irrelevant.

Then five years later, in a case involving the obligation of a foreign shipowner to care for a foreign seaman ill aboard its vessel (not a case of the liability of a foreign shipowner for an injury sustained within the United States), we find that Judge Learned Hand, now speaking for the majority, falling into the very same trap which he accused the majority of falling into five years earlier. Although the opinion in the *Taylor* case says that the court should find a "definite expression" of the purpose of Congress to change the long-settled international understanding as to the application of the law of the flag, the "definite expression" finally relied upon is no more than the very decision in the *Kyriakos* case with which he violently disagreed five years earlier.

By tracing the development of the application of the Jones Act to foreign seamen aboard foreign vessels all the way from the decision in *The Paula,* 91 F. (2d) 1001, in 1937 to *Larsen* v. *J. Lauritzen,* 196 F. (2d) 220 in 1952 we can see how each case involved slightly different facts and how, by permitting itself to be bound by prior decisions, the Court of Appeals maneuvered itself into a position where it was forced to ignore the language of the statute and the evidence of Congress' intent not to apply the statute to foreign seamen aboard foreign vessels injured outside the United States. As a result, the Court of Appeals has applied domestic statute law to the internal affairs of a foreign vessel outside the territorial waters of the United States, an application which flies in the teeth of long-settled international law recognized by our courts and Congress.

CONCLUSION

The judgment below should be reversed.

Dated, New York, November 25, 1952.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN

Plaintiff-Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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PETITIONER'S REPLY BRIEF

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,
Petitioner,
against
EVALD JOHANN LARSEN,
Plaintiff-Respondent.

PETITIONER'S REPLY BRIEF

The plaintiff-respondent's brief is noteworthy for its avoidance of the point made by petitioner that the terms of the Jones Act were not intended by Congress to be applicable to a factual situation such as is presented here. It cites no authority and makes no argument to maintain its position that the facts involved here were such as to require the Court to take jurisdiction and allow the plaintiff-respondent to maintain an action in our courts under the Jones Act rather than relegating him to a recovery under the Danish law, the law of the flag, nor does his brief cite any authority to show that the Jones Act was specifically intended by Congress to cover injuries sustained abroad by a foreign seaman signing on a foreign ship in a United States port, or that it was intended to supplant the traditional "law of the flag" rule in such situations.

The Question Presented

The question presented to this Court on certiorari was set forth on page 5 of the petition of the petitioner. The petition based on this question was granted by this

Court on October 13, 1952 (132).* The question presented was restated on page 2 of the brief for the petitioner, dated November 25, 1952. Now, in the brief for the plaintiff-respondent, we find, not one question presented, but, on pages 1 and 2, five questions presented, none of which conform to the question on which this Court granted certiorari.

The decisions of this Court have made it clear that the consideration of a case presented to this Court on certiorari is limited to the questions specifically presented by the petition. In *General Talking Pictures Corp. v. Western Electric Co., et al.*, 304 U. S. 175, 58 S. Ct. 849, 82 L. Ed. 1273 (1938), Mr. Justice Butler wrote as follows on page 177:

> "Our consideration of the case will be limited to the question specifically brought forward by the petition."

And then further at page 179, as follows:

> "One having obtained a writ of certiorari to review specified questions is not entitled here to obtain decision on any other issue. *Crown Cork & Seal Co. v. Gutmann Co., ante*, p. 159. Petitioner is not here entitled to decision on any question other than those formally presented by its petition for the writ."

In like tenor is the decision of Mr. Chief Justice White in *Tyrrell, Admnx. of Tyrrell v. District of Columbia*, 243 U. S. 1, 37 S. Ct. 361, 61 L. Ed. 557 (1917), wherein the Chief Justice stated that it was the duty of this Court to dismiss a certiorari upon discovering that the question which induced the issuance of the writ did not arise in the record. To the same effect are *National Licorice Company v. The National Labor Relations Board*, 309 U. S. 350, 357, 60 S. Ct. 569, 84 L. Ed. 799 (1940) and *Furness, Withy & Co. v.*

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* References herein are to pages of the record unless otherwise indicated.

Yang-Tze Insurance Association, 242 U. S. 430, 37 S. Ct. 141, 61 L. Ed. 409 (1917).

If this Court were to consider the five questions presented on pages 1 and 2 of the plaintiff-respondent's brief, it would find quickly that those questions found no support in the record before this Court. The petitioner respectfully submits that this Court should limit its consideration to the question presented by the petitioner, as set forth on page 5 of the petition and as restated on page 2 of the brief for the petitioner, dated November 25, 1952.

The brief for the plaintiff-respondent, as well as the briefs of *amici curiae* in support of plaintiff-respondent have presented situations without basis in the record and in the question presented to this Court by the petitioner.

The first situation is the hypothetical case of a foreign shipowner operating ships under his foreign flag, but who maintains headquarters and residence here in the United States. The second is the case, also hypothetical, of a foreign or United States shipowner who seeks refuge from United States jurisdiction by operating his ships under an alien registry having no connection whatsoever with the actual nationality of the vessel or her owners. The third is the foreign shipowner who, while operating his vessels to and from our shores, uses various foreign affiliations as a smokescreen for his operations, and who, as a result, makes only absolutely minimum provisions for the sick and injured seamen aboard his vessels.

None of these three situations are found in the case at bar. Though these are situations which may indeed exist in some quarters, they do not exist in the case at bar and have been seized upon by the plaintiff-respondent in an effort to make this Court believe that the case at bar presents a similar picture, while at the same time admitting that the record is totally devoid of any such inferences and that the arguments and situations presented in the plaintiff-respondent's brief have gone beyond the facts of the record (page 9 of the brief for the plaintiff-respondent).

Justification for going beyond the facts of the record is sought by stating that the plaintiff-respondent has been prejudiced by the amended answer of the defendant, the petitioner herein, pleading the foreign law (page 12 of plaintiff-respondent's brief). With respect to any alleged prejudice to the plaintiff-respondent, it should be noted that counsel for the plaintiff-respondent consented on May 7, 1951 (10), to the service of this amended answer by the defendant, all pursuant to Rule 15 of the Federal Rules of Civil Procedure. Based on this consent of plaintiff's attorney, the filing and serving of an amended answer was allowed by the order of the Honorable Edward Weinfeld of the United States District Court for the Southern District of New York on May 11, 1951.

This amended answer is no more prejudicial now than it was when this consent was given.

No objection was raised at the pre-trial conference held September 26, 1951 (15), nor was this issue formulated in the pre-trial order, dated September 27, 1951, (15-16). Finally, this issue of American ownership was not raised by plaintiff-respondent when, by order on consent, he amended his complaint November 16, 1951 (18-19).

The plaintiff-respondent asks to go beyond the facts of the record on the grounds that the question of ownership, control and operation of the s/s Randa was not at issue in the trial of this case (page 9, plaintiff-respondent's brief). The petitioner agrees that such matters both were not at issue at the trial and are outside the record.

If the Court should, despite petitioner's authorities cited above, look beyond the record, petitioner then submits that counsel for the plaintiff-respondent was conscious of the question of American ownership, operation and control of the s/s Randa prior to the trial of the case. On November 21, 1951, 15 days before the opening date of the trial, a subpoena was served by plaintiff-respondent on petitioner's New York representative requiring him to attend and produce the following records:

"1. The itinerary of the s/s Randa embracing the 7th day of October, 1946, and the itinerary of the s/s Randa on her two previous voyages.

2. All documents indicating when the defendant became the owner of the s/s Randa, the name or names of the individuals or corporations from whom defendant purchased said vessel, and the consideration paid therefor.

3. A manifest of the cargo which the s/s Randa carried on the voyage embracing the 7th day of October, 1946, showing for whose account or accounts such cargo was carried.

4. The articles of employment signed by the plaintiff for the voyage embracing the 7th day of October, 1946, indicating where the various members of the crew joined the s/s Randa."

Pursuant to the mandate of this subpoena, the witness attended with these records.

The plaintiff-respondent did not call this witness either to produce the documents or to testify as to petitioner's supposed American control.

The plaintiff-respondent has the burden of proof as to the jurisdiction of the court, and it was necessary, for plaintiff-respondent either to rely on the American sign-on as bringing the case under the jurisdictional requirements of the Jones Act under the ruling of the United States Court of Appeals for the Second Circuit in *Taylor* v. *Atlantic Maritime Co.*, 179 F. (2d) 597, 1950 A. M. C. 352 (2nd Cir. 1950), cert. den. 341 U. S. 915, 71 S. Ct. 736, 95 L. Ed. 1350, or to prove American ownership under the rule of *Gerradin* v. *United Fruit Co.*, 51 F. (2d) 417, aff'd 60 F. (2d) 927 (2nd Cir. 1932), cert. den. 287 U. S. 642. Plaintiff-respondent, having chosen not to call the witness, thereby deliberately left the record barren as to any proof now deemed necessary as to American control. However, counsel's judgment was undoubtedly sound since if the witness had been called, his testimony would have been to the effect that the s/s Randa was a Danish vessel owned and

operated by petitioner, a prominent Danish shipowner with a large permanent staff in Copenhagen.

Furthermore, there was absolutely no fraud or deception. In the First paragraph of the complaint (4) it was alleged that "Defendant has a principal office for the transaction of business at 80 Broad Street, in the Borough of Manhattan, City and State of New York." This allegation was denied by the defendant in both his answer (8) and amended answer (11). No proof was submitted by the plaintiff in support of this allegation, as to which the plaintiff bore the burden of proof.

Now, at this late stage in the proceedings, plaintiff-respondent is trying to revive this issue by stating or intimating that the petitioner, the defendant below, is an American entity, operating vessels in the United States (plaintiff-respondent's brief, pages 3, 5, 11, 12, 13, 18, 50 and 59). As "proof", plaintiff-respondent and *amici curiae* have shown nothing more than that American agents have openly advertised the sailings of some of petitioner's vessels. None of this "evidence" is new. It was fully available at the time the issues were framed before the trial. Despite these public advertisements, which, of course, find no place in the record, absolutely no testimony was produced and there is nothing to prove petitioner was or is an American entity.

There is no showing of any such newly discovered evidence as would entitle plaintiff-respondent to a new trial.

The Facts

Some errors in the facts stated in plaintiff-respondent's brief should be noted.

1. The record does not indicate that the plaintiff-respondent was signed on "a vessel regularly engaged in the American Shipping Trade" (brief, p. 3). In fact, there is nothing in the record to indicate the movements of the

s/s Randa for any period whatsoever beyond the fact that the plaintiff-respondent signed articles to serve aboard her in New York on July 25, 1946 (pre-trial order, 16, 44, Defendant's Exhibit A, 45); that the s/s Randa called at various South American ports and arrived in Havana, Cuba, about the beginning of October, 1946 (26); that on October 7, 1946, the s/s Randa was still in Havana, Cuba (33, 34); and that the s/s Randa eventually got to New York (pre-trial order 16, Defendant's Exhibit A, p. 9, column 17, 44, 45).

2. There is no foundation in the record for the statement set forth under "Statement of Facts" on page 3 of plaintiff-respondent's brief to the effect that "flagrant abuses of our hospitality are being practiced by other allegedly foreign shipowners who conduct their business in the United States in the names of foreign corporations, flying the flags of still other foreign lands, as a device to evade the obligations of our laws." Such statement is but one of the many examples where the plaintiff-respondent has gone beyond both the limits of the record and the question before this Court.

3. Plaintiff-respondent has misstated the record on page 4 of his brief when he says that Defendant's Exhibit A (44, 45) establishes a voyage from and to New York in that two seamen listed thereon, who signed on with plaintiff-respondent in New York, also signed off in New York on October 14, 1946. It is also stated that although the vessel flew the Danish flag, not one seaman listed signed on or off in Denmark.

Plaintiff-respondent's counsel did not notice that only a part of the articles are printed, as may be seen by the fact that only pages 8 and 9 were reproduced (upper left and upper righthand corners of second page of Defendant's Exhibit A). Also, as shown in column 10 of pages 8 and 9 of Defendant's Exhibit A, while most crew members signed on for an indefinite period, one man on those pages

reproduced, signed on for a voyage only from Havana to the United States (Defendant's Exhibit A, column 10, 4 lines from bottom, 44, 45). There is, in fact, nothing in the record to indicate the extent of the "voyage" for which the plaintiff-respondent signed on beyond the terms of the articles which called for a voyage to "South America and other places", and the pre-trial order which stated that the plaintiff signed articles and shipped from the port of New York for a voyage to South America and other places (16). In addition, the plaintiff-respondent testified (47) that he was bound to serve aboard the vessel for an indefinite period. This Court's attention is called to the exchange between the Trial Judge and counsel for the plaintiff-respondent (48-49) where the Trial Judge indicated that the wording of the pre-trial order did not deal with the "scope of the voyage", but merely stated the fact that the vessel finally got to New York.

The fact that two seamen listed on pages 8 and 9 of Defendant's Exhibit A, who signed on board the vessel in New York at the same time as Larsen, also signed off in New York, in no way indicates that this was a voyage from and to New York. The terms of the articles signed by these two seamen made it possible for them to sign off the vessel merely by giving 7 days' notice of such intention to the master (Defendant's Exhibit A, 44, 45), and under such terms, therefore, any seaman could have signed off at *any port*, regardless of the port at which he signed on.

4. The plaintiff-respondent has stated on page 5 of his brief that the Trial Court ruled and the jury found that there was no valid agreement to be bound by Danish law. While it is true that the Trial Court ruled that the Danish law was not to be given effect (113, 114), it is not true that the jury found that there was no valid agreement to be bound by Danish law, for the Trial Court refused to permit this question to be placed before the jury, and refused to permit the jury to consider any questions whatsoever involving the applicability or the effect of the Danish law (113, 114).

5. In stating that plaintiff-respondent received no benefits under the Danish law and did not elect to receive any such benefits (p. 4 of plaintiff-respondent's brief), plaintiff-respondent has ignored his own testimony, Defendant's Exhibit D (51), and also Defendant's Exhibit C (20, 21, 89), all of which substantiate the fact that plaintiff-respondent was duly cared for until he was able to return to work and did, in fact, receive the benefits due him under the Danish law. Nor was there, as pointed out above, any finding by the jury that the plaintiff-respondent did not receive full maintenance or compensation for his injury in accordance with the terms and provisions of such Danish law.

6. The alleged "facts", referred to in the brief of *amici curiae* on behalf of Petter D. Pedersen, et al. are totally outside the record and find no parallel application whatsoever to the record herein or the question presented to this Court on certiorari.

The Law

1. Point I of the brief for the plaintiff-respondent (pp. 9-24) alleges facts and issues "beyond the bare facts of the record". Similar alleged facts, equally unsupported by the record, may be found throughout this brief and throughout the briefs *amici curiae* calling for the affirmance of the decision of the United States Court of Appeals for the Second Circuit. In order that this Court might not be misled by these statements, brief comment will be made thereon.

Plaintiff-respondent, instead of relying on testimony in the record, has made a claim for the first time before this Court based only on advertisements and telephone listings that petitioner is an American entity operating and controlling its vessels from New York alone.

However, Lloyd's Register of Shipping for 1946-7, the year in which the plaintiff-respondent served aboard the

s/s Randa, indicates that J. Lauritzen of Copenhagen owned 24 vessels. Of these, only four were advertised in the services running to Colombia, Ecuador, Peru and Chile (Exhibit 2 on p. 18 of the brief *amici curiae* on behalf of Petter D. Pedersen, et al.) One of these four at that time was the s/s Randa.

2. Reference is made on page 11 of plaintiff-respondent's brief to the report of a Maritime Commission hearing on a Grace Line—West Coast Line pooling agreement, allegedly reported at 1940 A. M. C. 1515.

It should be noted that 1940 A. M. C. 1515 is not the report of the United States Maritime Commission, but is merely an editor's headnote on such report. The report is set out in full at United States Maritime Commission Reports, Vol. 2, page 372, and is entitled: *In Re Grace Line, Inc. and West Coast Line*, Pooling Agreement No. 5893, as amended.

This report indicates that the pooling agreement was entered into on May 19, 1937, and was subsequently approved under Section 15 of the United States Shipping Act of 1916 on July 1, 1937. The question before the United States Maritime Commission was limited to, as set forth on page 374, "whether under the existing extraordinary and emergent conditions the pooling agreement should be disapproved or modified and not whether any party thereto should recover damages". The extraordinary conditions and emergent conditions referred to the fact that between April 10, 1940, and the date of the hearing, the Danish vessels of J. Lauritzen, which formed a part of the pool with the Grace Line vessels, were immobilized as a result of the German invasion of Denmark. The sole question before the Commission was whether, by reason of the immobilization of the Danish vessels, the Grace Line was bearing an undue share of the burden of maintaining this joint service. There was no finding in the majority or minority reports that the pooling agreement was in any way detrimental to the interests of the commerce of the United States, as suc-

cinctly pointed out by Commissioner Truitt in his dissenting opinion at page 386. The closing paragraph of the majority report of the United States Maritime Commission reads as follows (p. 381):

> "We conclude and decide that under the changed circumstances disclosed of record, Pooling Agreement No. 5893, as amended, is unjustly discriminatory and unfair *as between the carriers party thereto.*" (Emphasis supplied.)

In fact, the report of the United States Maritime Commission, above referred to, makes it clear that the pooling agreement had been openly arrived at and officially approved by the United States authorities. The approved relationship existing between J. Lauritzen and Wessel Duval & Co., Inc. in 1940 in the sharing of profits from time-chartered American flag vessels (2 U. S. M. C. 378) is no proof as to the *modus operandi* of Danish flag vessels in 1946.

3. Plaintiff-respondent refers to the Shipowners Liability Convention, 54 Stat. 1693, proclaimed September 29, 1939 (page 16 plaintiff-respondent's brief). Petitioner submits that such a convention is the proper multilateral means approved by Congress of determining shipowners' liability. Denmark, however, is not a party to this convention.

4. Reference to agents for foreign vessels in United States ports (plaintiff-respondent's brief, page 18) as an alleged reason for applying American statutes to the internal affairs of foreign vessels, fully overlooks the point that American vessels trading to foreign ports use agents and subsidiary corporations in these foreign ports, without which operations would be commercially impossible; but that does not mean that these American vessels in international trade become any less American just because they are required by the nature of their business to employ agents in their foreign ports of call.

5. Counsel for plaintiff-respondent, under Point II on pages 29 and 31 cites the cases of *Patterson* v. *Bark Eudora*, 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002 (1903) and *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348, 40 S. Ct. 350, 64 L. Ed. 607 (1919) in support of the plaintiff-respondent's position. Both these cases were fully discussed in petitioner's brief, dated November 25, 1952, wherein it was pointed out that both involved the constitutionality of the United States statutes which Congress had expressly specified should be applicable to foreign vessels in our ports. As was pointed out in that brief, these cases find no parallel in the one at bar, since in the Jones Act and its legislative history we find no indication of an intent on the part of Congress or in the language of the section itself that its terms should be applicable to alien seamen aboard foreign vessels who are injured in foreign ports. This misinterpretation of *Strathearn S. S. Co.* v. *Dillon, supra*, is pointed up by the statement of counsel for plaintiff-respondent at page 31 that "this Court gave a foreign seaman signing on a foreign vessel in a foreign port the right to sue in our courts for relief". It is respectfully submitted on behalf of the petitioner that this Court did not give the foreign seaman the right to sue. That right was given by Congress in Section 4 of the Act of March 4, 1915, C. 153, 38 Stat. 1164, 1165, Title 46, U. S. C. § 597, wherein it was stated:

> "* * * *and provided further*, that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement".

The ruling of this Court in *Strathearn S. S. Co.* v. *Dillon, supra*, upheld the constitutionality of this provision. The ruling of this Court did not extend the application of the section beyond the language provided by Congress. This is an important distinction to bear in mind. As has been pointed out, petitioner is not asking this Court to find in the face of the wording of the Jones Act, but submits that Section 20 of the Act of March 4, 1915, as amended by Sec-

tion 33 of the Act of June 5, 1920, C. 250, 41 Stat. 988, 1007, Title 46, U. S. C. § 688, takes its place with those sections of the 1915 Act which were not extended to foreign vessels and does not belong in the same category with Sections 4, 11 and 14 of the Act of 1915, which were, as has been pointed out fully in petitioner's brief, specifically extended to apply to foreign vessels under certain stated conditions.

6. On page 31 of plaintiff-respondent's brief, counsel has misunderstood and misinterpreted the quotations on page 20 of the brief for the petitioner from House Report No. 851, 63rd Congress, 2nd Session, pages 18 and 20. The reluctance expressed in this report was directed specifically to those sections of the Act of 1915 which were to be extended to foreign vessels, i.e., Sections 4, 11 and 14. The quotations on page 20 of petitioner's brief related to Section 4 of this Act dealing with half wages, which has been quoted above, and can in no way be interpreted to mean that these members of Congress thought that all 20 of the Sections of the Act of 1915 were to be applied to foreign vessels. The language of this report and the language of the Act permit no such interpretation.

7. Plaintiff-respondent's citations of admiralty decisions taking jurisdiction over disputes between aliens (pp. 24-29 of plaintiff-respondent's brief) ignore the jurisdictional requirements which a plaintiff must plead and prove in an action at law in a United States District Court.

The record contains a pleading of the Jones Act (6) and proof that plaintiff-respondent signed articles in New York (16, 24, 44).

There is neither pleading nor proof of such diversity of citizenship as would be required to sustain the jurisdiction of the District Court if the Jones Act were not applicable (28 U. S. C. § 1332).

Furthermore, absent the Jones Act, the Court will enforce the law of the flag since the contract of employment was a Danish contract and so remained throughout. The place

where plaintiff-respondent shipped or reshipped is of no moment whatsoever. *The Hannah Nielsen,* 273 F. 171, 172 (2nd Cir. 1921).

8. Plaintiff-respondent attempts to distinguish *The Paula,* 91 F. (2d) 1001, 1937 A. M. C. 988 (2nd Cir. 1937), cert. den. 302 U. S. 750, 58 S. Ct. 270, on pages 11, 36 and 58 of his brief on the grounds that the libel was only *in rem* without disclosing that the libel in *The Paula* was both *in rem* and *in personam,* 91 F. (2d) 1001, 1937 A. M. C. 989.

9. *The Titanic,* 233 U. S. 718, 34 S. Ct. 754, 58 L. Ed. 1171 (1913), cited on page 29 of plaintiff-respondent's brief, held only that a foreign shipowner who was sued in the United States was entitled to the benefits of the United States statutes limiting his liability, such statutes having been made *specifically applicable* by their terms to foreign, as well as to American shipowners. The holding of this Court was that the foreign shipowner was entitled to the limitation of liability conferred upon him by the statute, but the holding was not that the application of our laws was any broader than the explicit language of the statute.

10. Counsel for plaintiff-respondent cites and quotes from *Uravic, Admnx. v. F. Jarka Company, Inc.,* 282 U. S. 234, 51 S. Ct. 111, 75 L. Ed. 312 (1931), on page 32 of his brief. This case is hardly in point since it involved a question of liability for causing the death of an *American* citizen employed as a longshoreman by a Delaware corporation and working "momentarily" aboard a German vessel in the port of New York. This Court was clearly dealing with an event within the territorial jurisdiction of the United States. Mr. Justice Holmes made this clear on page 240, when he stated as follows:

> "It always is the law of the United States that governs within the jurisdiction of the United States, even when for some special occasion this country adopts a foreign law as its own. * * * It would be extraordinary to apply German law to Americans momentarily on board of a private German ship in New York."

11. The articles here were valid. While the articles such as were signed by Larsen would, according to plaintiff-respondent, be invalid as applied to an American crew signing on an American vessel in American waters, still it has never been contended or held that the statutes relating to the form of articles should apply as well to foreign vessels, such as the s/s Randa, signing on foreign seamen in American ports. This is in recognition of the fact that there are certain matters which should more properly be left to be dealt with by the provisions of the law of the flag of the vessel. The inability of the plaintiff-respondent to find any authority for his suggestion that the articles herein were invalid is explained by the fact that although the initial section dealing with the form of articles (§ 1 of the Act of March 4, 1913, C. 141, 37 Stat. 736, Title 46, U. S. C. § 564), which had its origin in Section 4511 of the Revised Statutes of 1873, uses the expression "every vessel", yet Section 1 of the Act of March 4, 1915 (C. 153, 38 Stat. 1164, Title 46, U. S. C. § 569), which had its origin in Section 4516 of the same chapter of the Revised Statutes of 1873, states that in cases of desertion or casualty, the master must ship sufficient replacements "and report the same to the United States consul at the first port at which he shall arrive". This clearly points its application to the masters of only United States vessels.

The only case cited by counsel for plaintiff-respondent in support of his position on the invalidity of the articles signed is *The Quoge*, 261 Fed. 414, aff'd 266 Fed. 696 (4th Cir. 1920). This case is clearly inapplicable to the point, since it dealt with the validity of articles to serve aboard an American vessel, which articles were, of course, required to conform to the appropriate United States statutes.

To the contrary is *The Hannah Nielsen*, 273 F. 171 (2 Cir., 1921), which gave effect to Norwegian articles signed in the port of Portland, Maine.

12. The case of *Arthur* v. *Compagnie Generale Transatlantique*, 72 F. (2d) 662 (5th Cir. 1934), finds no parallel

application to the case at bar, since it involved an injury to a stevedore temporarily aboard ship while discharging cargo in the harbor of Cristobal, Canal Zone, which is, of course, within the territorial jurisdiction of the courts of the United States.

13. Plaintiff-respondent cites *Stewart* v. *Pacific Steam Navigation Co.*, 3 F. (2d) 329 (S. D. N. Y. 1924), on page 36 of his brief. This case apparently involved an action under the Jones Act between an *American* seaman and a corporation organized outside the United States. This finds support in the following language of Judge Learned Hand at page 329:

> "There is no indication of any purpose to limit it to United States corporations, and it would be highly unreasonable to impute any such purpose to Congress, for the result would be, not only to deprive *American seamen of the protection which the Act was meant to give them when serving on foreign ships*, but to give advantage to such ships as against American ships."

That case did not present an all-foreign question such as is presently before this Court.

14. As has been pointed out above, counsel for plaintiff-respondent and counsel for *amici curiae*, submitting briefs on his behalf have set up a straw man of a foreign seaman signing articles on a ship owned by Americans, but operated under a foreign flag. In this connection it is interesting to note that both plaintiff-respondent and the brief of *amici curiae* on behalf of the "Friends of Andrew Furuseth Legislative Association" cite *Gerradin* v. *United Fruit Co.*, 51 F. (2d) 417, aff'd 60 F. (2d) 927 (2nd Cir. 1932), certiorari denied 287 U. S. 642. In that case the Jones Act was held applicable to a seaman injured on board a Honduran ship, but owned by a New York corporation and demise chartered to defendant, a New Jersey corporation. The Court held that the ownership by American citizens was pivotal and wrote as follows at page 929:

> "There can be no doubt about the power of Congress to impose liability *upon its own citizens* for acts done on the high seas or at other places outside its territorial jurisdiction. American Banana Co. v. United Fruit Co., 213 U. S. at page 356, 29 S. Ct. 511, 53 L. Ed. 826, 16 Ann. Cas. 1047. Section 33 of the Merchant Marine Act (46 U. S. C. A. § 688) has done this in the case of American citizens who own ships on which seamen are injured through their negligence, and it seems but a slight disregard of the symbol of foreign registry to apply an ordinary rule of torts to a shipowner who bears such an illusory shield." (Emphasis supplied.)

The rule established by this case adequately provides for cases of foreign flags being used as smokescreens for true ownership.

That the courts will pierce the corporate veil is shown in *Central Vermont Co. v. Durning*, 294 U. S. 33, 55 S. Ct. 306, 79 L. Ed. 741 (1935), where a Maine corporation was engaged in operating a steamship line on Long Island Sound between New London, Connecticut and New York City, employing vessels built in the United States and documented under our laws. All the Maine corporation stock, with the exception of directors' qualifying shares, was held by a Vermont corporation, all of whose stock in turn, with the exception of directors' qualifying shares, was held by the Canadian National Railway Co., a Canadian corporation. This Court held that the American vessels were not owned by persons who were citizens of the United States within the provisions of Section 27 of the Merchant Marine Act of 1920 forbidding coastwise transportation of merchandise on foreign vessels.

Such is not the case here. Plaintiff-respondent nowhere raised the issue that petitioner was an American citizen, but based his claim for recovery solely on the fact that he signed articles within the United States. Plaintiff has the burden of proof as to the jurisdiction of the court, i.e., by proving diversity of citizenship or by coming within the

Jones Act. He has not sustained this burden. Judgment in his favor should be reversed, and the complaint dismissed.

15. *O'Donnel* v. *Great Lakes Co.*, 318 U. S. 36, 63 S. Ct. 488, 87 L. Ed. 596 (1943), cited by plaintiff-respondent on page 37 of his brief, applied the Jones Act as the law of the flag of the ship, since this was the applicable law rather than the law of the port of call. This, of course, is totally in accord with petitioner's position herein.

16. With respect to *Gambera* v. *Bergoty*, 132 F. (2d) 414, 1943 A. M. C. 45 (2nd Cir. 1942) certiorari denied 319 U. S. 742, 63 S. Ct. 1030, 87 L. Ed. 1699, the plaintiff-respondent has only told half the story in stating on page 38 that relief was afforded "to a foreign seaman". This case was fully discussed in the brief for the petitioner on pages 52 and 53, wherein it was pointed out that the libelant Gambera, far from being a foreign seaman, had in fact resided in the United States for 23 years, had served in the United States Army for two years, and had even filed his first papers for naturalization as a United States citizen.

17. The decisions in *Kyriakos* v. *Goulandris*, 151 F. (2d) 132, 1945 A. M. C. 439 (2nd Cir. 1945), and *Taylor* v. *Atlantic Maritime Co.*, 179 F. (2d) 597, 1950 A. M. C. 352 (2nd Cir. 1950), cert. den. 341 U. S. 915, 71 S. Ct. 736, 95 L. Ed. 1350, have already been dealt with fully in petitioner's main brief.

18. On pages 57 and 58 of his brief, plaintiff-respondent alleges that the case of *Thompson Towing & Wrecking Association* v. *McGregor*, 207 Fed. 209 (6th Cir. 1913) nullified petitioner's *lex loci delictus* argument. Plaintiff-respondent does not, however, justify such a conclusion. This was an appeal from a decree entered in a proceeding to limit liability respecting a boiler explosion on a United States lighter, which resulted in the instant death of one man on board the vessel, and in permanent injury to Mc-

Gregor, both of whom were members of her crew. This explosion occurred in an arm or bay of Lake Huron in Canadian territorial waters. McGregor and the administratrix of the deceased commenced separate suits in the County Court of Michigan to recover damages for the permanent injuries and death mentioned. With respect to the question of the application of Michigan or Canadian law, Judge Warrington wrote as follows (at page 215):

> "Concededly the state suit was begun within the time fixed by the Michigan death statute. Can the right of action in terms preserved to the widow by that statute be enforced? If so, it is because at the time of the death the Stewart was through ownership and registration domiciled in Michigan and was, as respects the enforcement of such a right, part of the territory of Michigan. So far as this question is concerned, the ultimate basis of the decree was 'that the explosion of this boiler was a matter which did not directly involve the "peace, dignity, or tranquility" of the Canadian government, but rather involved the "internal discipline and management" of the ship.'"

In holding that the liability of the vessel for the death and injury was governed by the Michigan law, the court subscribed to the language found in *United States* v. *Rodgers*, 150 U. S. 249, 14 S. Ct. 109, 37 L. Ed. 1071 (1893), wherein Mr. Justice Field wrote as follows (at p. 260):

> "The general rule is that the country to which the vessel belongs will exercise jurisdiction over all matters affecting the vessel or those belonging to her, without interference of the local government, unless they involve its peace, dignity, or tranquility, in which case it may assert its authority."

Far from nullifying petitioner's argument as to the *lex loci delictus*, this case fully supports petitioner's position both with respect to that rule and with respect to the application of the law of the flag to matters involving only "the internal discipline and management" of the vessel.

19. On page 60 of plaintiff-respondent's brief under the heading "Conclusion" it is stated that "the real point at issue is not the intent of Congress in passing this Act, but the power of this great country, acting through its judicial arm, to protect itself against foreign vessels that, by indirection and misapplication of a rule not finding international acceptance, assume all the benefits and prerogatives of American vessels while at the same time callously avoid the disabilities and liabilities which should attend the assumption of such benefits under our flag." This conclusion epitomizes the misapprehension under which the plaintiff-respondent is laboring. The petitioner has never contended, and has taken great pains to point this out from time to time during the course of this proceeding, that Congress did not have the power to legislate with respect to certain aspects of foreign vessels calling at United States ports.

If Congress had said with respect to Section 20 of the Merchant Marine Act of 1915, as amended, that "the provisions of this section shall be applicable to foreign owners signing on alien seamen in any port of the United States", then your petitioner would not now be before this Court. The reason why the petitioner appealed from the rulings of the Trial Court and petitioned for certiorari from the ruling of the Court of Appeals is that the Jones Act, as written by Congress, contains no such provision and does not state that it was to be applied to foreign vessels under any conditions whatsoever.

It is respectfully submitted that neither this Court, nor any other United States court has the power to extend an act of the Legislature beyond its clearly intended scope. The functions of our courts are, under the Constitution, judicial and not legislative. If Congress intended the provisions of the Jones Act to apply to a set of facts such as are here presented to this Court, then the language of the Act falls short of accomplishing that intent. The remedy, if a remedy is deemed desirable, lies in the legislative power of Congress.

CONCLUSION

The judgment below should be reversed.

Dated, New York, December 31, 1952.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONER'S OBJECTION TO THE MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE ON BEHALF OF THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH

JAMES M. ESTABROOK,
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New York 4, N. Y.

DAVID P. H. WATSON,
of Counsel

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,
Petitioner,
against
EVALD JOHANN LARSEN,
Plaintiff-Respondent.

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Now comes J. Lauritzen, the petitioner herein, and, in accordance with Rules 7(3) and 27(9)(c) of the Revised Rules of the Supreme Court of the United States, respectfully opposes the motion of the Danish Sailors' and Firemen's Union, New York Branch, for leave to file a brief as *amicus curiae* for the following reasons:

1. The brief of the Royal Danish Government, as *amicus curiae*, recites on page 5 thereof, that the Royal Danish Government obtained the opinion of the Danish Seamen's Union, as well as the opinions of the Danish Shipping Administration and the Federation of Danish Shipowners, before formulating its views that the decision of the court below would work serious injury to the Danish seamen and shipowners, alike (page 10 of the brief).

2. The proposed brief of the Danish Sailors' and Firemen's Union, New York Branch, does not represent the position of the Seamen's Union in Denmark, as evidenced by a letter dated December 6, 1952, from the Chairman of that Union to the petitioner, wherein it is stated that the Board of the Union had advised the International Trans-

port Federation and the New York Branch of the Seamen's Union in Denmark, the movant herein, that the Union did not wish to intervene in this case. These instructions were confirmed by a letter, dated Copenhagen, January 27, 1953, from the President of The Firemen's Union in Denmark and the President of The Seamen's Union in Denmark addressed to the Unions' New York representative, Fred B. Clausen. A translation of this letter is annexed hereto as Appendix I.

3. The oral argument in this case having been held on January 6, 1953, the filing of an additional brief *amicus* at this time does not comply with Rule 27(9)(c) of the Revised Rules of the Supreme Court of United States requiring such motions for leave to file briefs *amicus curiae* to be "timely" presented to this Court.

4. There is no showing in the motion papers or the proposed brief of the movant, as required by Rule 27(9)(c), of any facts or questions of law which have not already been presented adequately by the same counsel in the brief *amicus* he has already filed, by the parties in their briefs, in the oral arguments before this Court on January 6, 1953, or in the five other briefs of *amici curiae* already before this Court.

For the reasons stated above, it is respectfully submitted that the motion of the Danish Sailors' and Firemen's Union, New York Branch, for leave to file a brief as *amicus curiae* should in all respects be denied.

Dated, New York, January 29, 1953.

JAMES M. ESTABROOK,
Counsel for Petitioner,
80 Broad Street,
New York 4, N. Y.

DAVID P. H. WATSON,
of Counsel.

APPENDIX I

Copenhagen, January 27th, 1953
Th. L—137/1953

The Seamen's Union in Denmark,
5 Herluf Trollesgade,
Copenhagen, K.

Air mail

Mr. Representative
Fred. B. Clausen,
156, Montague Street,
Brooklyn, 2, N. Y.
U. S. A.

Good Fellow,

We refer to our letter dated 12th November, 1952, (copy enclosed) and after having learned that by letter dated Brooklyn, January 15th, 1953, to the Justices of the U. S. Supreme Court, Washington, D. C., you have, as a representative of the Seamen's and Firemen's Union in Denmark, given a declaration that you sympathize with the case brought before the court by Evald Johan Larsen against the Steamship Company "Vesterhavet", Denmark, we shall not omit to inform you that in complete accordance with the advice to you on the 12th November, 1952, we cannot agree to the attitude, which you have taken, as you have not had any powers to give such support.

As the Union, who have previously discussed this question, are still of opinion that this case, which is being tried before the American Supreme Court according to the statutes of The Jones Act, is a question which does not concern the Board of the Union, we shall request you to withdraw, as soon as possible, the brief which you have handed in in virtue of your position in the Union's New York branch.

Firemen's Union in Denmark
For the Board
(sgd.) Richl. Jensen
President

The Seamen's Union in Denmark
For the Board
(sgd.) Th. Laursen
President

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No. 226

J. LAURITZEN,

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against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,
Petitioner,

against

EVALD JOHANN LARSEN,
Plaintiff-Respondent.

BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI

The Question

Should the rule, as stated in *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597, 2 Cir., cer. den. 341 U. S. 915, 71 S. Ct. 736, be reviewed again?

That rule established the rationale that the Jones Act imposed its terms on all owners who signed on crews in an American port.

The controlling and pivotal facts in this cause and the *Taylor* case are the same.

No compelling reason for review is offered.

Neither the circumstances nor the cases relied on disclose any material variance from those presented to this Court in the *Taylor* case. There is neither conflict nor disharmony requiring action by this Court.

Petitioner has predicated his argument on the assumption that an "all-foreign" problem is involved, affecting only the internal economy of the vessel and without effect

upon the United States. Therefore, the "law of the flag" should be applied.

That is not so.

Foreign shipowners, including this petitioner, do operate within the stream of our commerce and they do exercise a substantial impact on our economy. Neither right nor reason justifies granting them extraterritorial privileges within our jurisdiction.

It has been long established that our courts have jurisdiction of suits between foreign citizens and that the maritime law, as understood by our courts and enacted by our Congress, will be applied.

The rule of the *Taylor* case does not favor American vessels and seamen to the detriment of foreign owners; on the contrary, it rectified the unjust unbalance favoring the latter.

The rule in question places all who use American ports and facilities on a parity, aliens and citizens alike, giving life and meaning to our cherished principle of equality under own laws.

The Facts

To supply omissions and correct erroneous inferences to be drawn from petitioner's statement of the facts, it would be well to restate the salient circumstances of this case.

Both parties are Danish citizens.

Petitioner, a shipowner, registered under the Danish flag, has been engaging in the shipping trade between the United States and Chile, prior to 1937, according to the record in "*The Paula*", 91 F. 2d 1001 (2 Cir., 1937).

Respondent, a seaman, signed Articles in New York on July 25, 1946, to serve aboard the *SS. Randa*, for a voyage from and to New York (fols. 75, 138). The Articles merely stated "a voyage to South America and other places".

Petitioner admitted that the Articles called for an indefinite service (fols. 139, 145), thus contravening the laws of the forum where made, rendering them void and subject to a liberal interpretation in favor of the seaman.

The vessel did return to New York and respondent had a right to expect such return (Pre-Trial Order and admission, fols. 46 and 145).

Defendant's Exhibit A (p. 45), the Articles, show that the last two seamen listed thereon, who signed on with respondent in New York, signed off in New York on October 14, 1946, only seven days after respondent's injury in Havana. Thus petitioner's own exhibit nullifies his claim and establishes a voyage from and to New York.

The same exhibit shows that although the vessel flew the Danish flag, *not one seaman* listed signed on or off in Denmark.

The Articles provided for wages at a scale fixed between Danish operators and Unions.

While on the return voyage, petitioner was injured aboard the vessel at Havana, Cuba, on October 7, 1946, while in its service, due to fault attributable to petitioner.

He was hospitalized in Havana, Cuba.

He was returned to the United States aboard another vessel owned by petitioner (fol. 47).

He was again hospitalized at the U. S. Marine Hospital, Ellis Island, N. Y. (fol. 47).

He was paid one week's wages, the equivalent of wages to the end of the voyage, and he received medical care. The proof established and the jury found that he did not receive full maintenance nor any compensation for his injury. Thus there is no basis for petitioner's claim that respondent elected to receive or did receive any benefits under the Danish law.

Service of the summons and complaint herein was effected upon petitioner by serving J. Lauritzen Agency, Inc., a domestic corporation, at 67 Broad Street, N. Y. C. An affidavit of this service is on file with the papers herein in the U. S. District Court for the Southern District of N. Y.

Attorneys for petitioner appeared herein on May 20, 1947 (fols. 19-21), and interposed an answer. (fols. 22-27). Such answer did not raise any defense to the applicability of the Jones Act and at no time was the validity, propriety or jurisdiction of the service questioned.

By stipulation dated May 7, 1951, and order entered May 11, 1951 (p. 10), four years later, the amended answer was filed and served.

The Trial Court ruled, and the jury found, that there was no valid agreement to be bound by Danish law.

The question of negligence was proven and submitted to the jury. The jury verdict was in favor of respondent in the sums of $4,052.50 for damages and $215 for maintenance.

On appeal to the United States Court of Appeals for the Second Circuit, the judgment was sustained on the authority of *Kyriackos* v. *Goulandris*, 2 Cir., 151 F. 2d 132, and *Taylor* v. *Atlantic Maritime Co.*, 2 Cir., 179 F. 2d 597, cert. den. 341 U. S. 915.

POINT I

The circumstances herein stem from activities in the United States which profoundly affect its public welfare and require the application of its maritime laws.

The petitioner suggests that we are dealing with an "all foreign" situation concerning a foreign owner, office, enterprise, seaman and place of injury, affecting exclusively the internal economy of the vessel, with which this country is in no way concerned.

The contrary is true.

We deal here with a foreign seaman, hired in the United States, under Articles that were signed in the United States. Larsen, the respondent, shipped on a voyage which started and ended in the United States, and he received medical treatment in the United States at a U. S. Marine Hospital as well as at the Long Island College Hospital.

We are also concerned with a shipowner, whose vessels fly a foreign flag, who for many years has regularly engaged and is now engaging in the shipping trade between the United States and Chile and intermediate points. His agent and business alter ego bears his name, J. Lauritzen

Agency, Inc. It is a domestic corporation with offices at 67 Broad Street, N. Y. C.

The jurisdiction of our Courts was conceded when this corporation appeared in this action without questioning the validity of the service herein.

Unquestionably, this petitioner has usurped a position in our foreign commerce, thereby affecting our economy. Such position implicitly requires him to be subjected to our laws with even greater urgency than in the instances where police-powers are involved.

This is not an isolated incident in the American shipping trade. It is symptomatic of the challenge presented by foreign shipowners to the American Merchant Marine and the seamen dependent upon it.

The official and reported records of the New York Customs office for the fiscal year July 1, 1951 to June 30, 1952, shows the comparative number and tonnage of vessels entering and clearing the Port of New York alone:

	Entered		Cleared	
	Vessels	*Tonnage*	*Vessels*	*Tonnage*
American	4,866	21,694,804	4,864	21,661,193
Foreign	3,525	16,620,261	3,420	15,358,767

Furthermore, it is a matter of common knowledge that a very substantial number of foreign flag vessels, of nations having little commerce to justify so large a fleet, operate in large measure from and to our ports, maintain regular schedules and rarely, if ever, put into their so-called home ports.

Many of these operators, with the aid of their Government and their seamen's Unions, operate quarters, hiring halls and other facilities for their seamen in American ports. They also use U. S. Public Health and other facilities of our nation.

The aforesaid facilities are indispensable to foreign shipowners who need a pool of foreign seamen in this country

to implement the myth of exclusively foreign flag vessels. Otherwise, they would be compelled to hire American seamen, at higher American wages and better standards for maintenance, cure and liability damage.

It is also a matter of common knowledge that these foreign shipowners maintain agents in this country (exclusive of those who use the foreign flag as a mere blind). Many of these bear the same name as the foreign owning company. For example:

Foreign Line	*American Counterpart*
J. Lauritzen	J. Lauritzen Agency, Inc.
Fernley & Eger	Fernley & Eger, Inc.
Wilhelmsen	Barber Steamship Co., commonly known as Wilhelmsen-Barber Lines
Oivind Lorentzen	Oivind Lorentzen, Inc., with two sons residents of New York, doing business at the corporate office

Under such circumstances, we are compelled to conclude that these foreign flag vessels are actually engaged in the American shipping trade.

From the very beginning of our national existence, it has been the policy of the United States to construct and maintain a Merchant Marine. To that end, we have subsidized and are subsidizing this endeavor. We train seamen for that purpose at Government expense and afford them fair wages and humane safeguards for their safety and health as an inducement to the best elements of our manhood to engage in the Merchant Marine as a life's work.

As a matter of enlightened self-interest, should we permit foreign operators with lower costs, operating in American trade, to hire seamen in our ports, free from our remedial statutes, thus giving them a greater competitive advantage to the further detriment of our Merchant Marine and its seamen?

In keeping with our doctrine of fostering world trade, we do not seek to eliminate them or to give any improper advantage to our Merchant Marine. However, in using our ports and facilities, foreign operators should be subject to the same laws as are the American operators.

The *Taylor* case and the instant one merely tend to remove inequality.

POINT II

Our legislative and judicial history is replete with statutes and cases applying American law to foreign ships, shippers, passengers and seamen, not excluding foreign contracts and commercial documents.

Petitioner urges that the General Maritime Rule of the "Law of the Flag" is paramount to American law as applied to vessels using our ports.

As this Court so aptly stated in *"The Western Maid"*, 257 U. S. 419 (432), "there is no mystic over-law to which even the United States must bow" and that the General Maritime Rules are valid only to the extent that they are "accepted and adopted by the United States".

In *Patterson* v. *Bark Eudora*, 190 U. S. 169, 176 (1903), this Court stated the rule to be:

> "Yet when a foreign merchant vessel comes into our ports, like a foreign citizen coming into our territory, it subjects itself to the jurisdiction of this country."

In *Strathcarn SS. Co., Ltd.* v. *Dillon*, 252 U. S. 348, 40 S. Ct. 350 (1919), this Court gave a foreign seaman, signing on a foreign vessel in a foreign port, the right to sue in our courts for relief under our wage laws, in spite of the fact that he signed a contract abroad which denied him such rights.

While *The Scotland*, 105 U. S. 24 (1881), and *The Belgenland*, 114 U. S. 355 (1884), are not directly in point, involving, as they do, collisions on the high seas, nevertheless

it is pertinent that early authority is cited for a long standing precedent in the application of the "law of the forum" and not the "law of the flag" to foreign owners.

The Titanic, 233 U. S. 718 (1913), broadened the base of the application of our laws to two foreign citizens of the same nationality for a tort on the high seas.

It is significant that the British claimant, Mellor, in opposing the application of the British shipowner for relief under American limitation statutes, offered the same arguments as does the petitioner herein.

It was claimed that on land the lex loci delicti was universally applied; that on sea it was the law of the flag; that the vessel flying the British flag, made British law the lex loci delicti, thereby fixing the limit of its liability; and that the statutes of a State or Nation have no extraterritorial effect, otherwise a shipowner would be subjected to different liabilities in different jurisdictions for the same event.

Mr. Justice Holmes disposed of the last argument by holding that the fact that the British owner might be sued in many jurisdictions, subject to local rule in each case, with divergent results and different liabilities, was not a valid reason for denying application of the American statute. The diverse nationalities of the various claimants was not controlling, since there was a separate appeal filed by the British subject.

While it is true that British tort obligations are generally created by British law, Mr. Justice Holmes noted the well recognized exceptions when he wrote (p. 732):

> "But it is also true that the laws of the forum may decline altogether to enforce that obligation on the ground that it is contrary to public policy, or may decline to enforce it except within such limits as it may impose. Cuba Railroad Co. v. Crosley, 222 U. S. 473, 478, 480. Dicey, Conflict of Laws, 2d ed., 647. It is competent therefore for Congress to enact that in certain matters belonging to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it may mark out."

It is also noteworthy that in the *Bark Eudora* and the *Strathearn* cases, supra, the parties were also of the same nationality. Nevertheless, in the latter case American law was applied in direct contravention to the terms of a contract, valid where made.

Thus our courts have declared that the "law of the flag" is not a sacred doctrine superior to the law of our land.

The Jones Act is declarative of the rights of all seamen whose owners submit themselves to our jurisdiction by signing them on in our ports.

Nor does the Jones act stand alone as a legislative mandate applying to foreign owners and seamen using our ports. The Harter, Limitation of Shipowner's Liability, High Seas Death, Stand-by, Passenger and other statutes, equally subject, and accord privileges to, foreign citizens.

Thus it is clear that our Legislature and our courts have set the standards of the laws of the United States in the very areas which it is claimed the "Law of the Flag" must apply. The Jones Act is only one of the many such laws, regulations and doctrines so applied to foreign shipowners and seamen who use our ports.

If our laws are applicable to foreign shipowners, when to their advantage, to foreign passengers, to commercial documents valid where drawn, reason and justice demand that they be applied for the benefit of the seamen who make possible the carriage of goods and passengers from and to the United States.

POINT III

The facts herein are within the purview of the Jones Act under the rationale of the *Kyriakos* and *Taylor* cases.

The Jones Act applies to all seamen, foreign as well as citizens of the United States.

In *Kyriakos* v. *Goulandris*, supra, Judge A. N. Hand wrote:

> "When Congress used the word 'seamen' in the Jones Act it employed a word of general application, embracing men of any nation who sail the seas. Had it wished to limit the application of the statute to seamen of American citizenship or residence, the words to effectuate the limitation were at hand. The legislature did not see fit to use them."

The opinion, too lengthy for inclusion herein, fully discusses the doctrine of the "Law of the Flag", its limitations as established in the *Patterson* and *Strathearn* cases, supra, and concludes that such prior decisions and the liberal interpretation of statutes in aid of seamen confirms the right of foreign seamen, signing on in American ports for voyages on foreign vessels, to bring suit under the Jones Act.

The reasoning is clear and unassailable.

Judge Learned Hand, in his dissenting opinion, stated "There is much temptation to affirm this decree—", but harks back to the theory of the "Law of the Flag" and the "internal economy of the vessel".

His dissent is rather surprising in view of his previously very strong opinion in *Stewart* v. *Pacific Navigation Co., Ltd.* (S. D. N. Y., 1924), 3 F. 2d 329, wherein he rejected petitioner's concept that under the Jones Act "no action can be brought against a foreign corporation" and held that foreign corporations are suable under this Act.

But even more surprising is his failure to balance the vessel's internal economy with that of the nation which is its host.

Certainly it cannot be denied that the "Law of the Flag" must give way to the forum, not only on police powers, but where the paramount interests of the nation are involved. Otherwise, we would have an abdication of sovereignty, which no government would concede.

In favoring the economy of the foreign vessel, we would be giving it an unfair advantage over our vessels and our

seamen, while in rejecting this concept, which we have the right and duty to do, we are not giving any advantage to our vessels to the detriment of the foreign. We merely place all on a parity within the provisions of our laws.

However, in the *Taylor* case, supra, Judge Learned Hand decided the issues herein when, in discussing the *Kyriakos* case, he said:

> "* * * and the rationale of that opinion went further; and that it construed the Jones Act as imposing its terms on all owners who sign on crews in an American port."

Every pivotal and controlling fact herein is similar to those in the *Kyriakos* and *Taylor* cases.

Residence and place of injury are merely incidental and are not controlling.

In *O'Donnel v. Great Lakes Co.*, 318 U. S. 36, 63 S. Ct. 488, the jurisdiction of the Jones Act was disputed as to an injury incurred on land, to a seaman serving on a vessel engaged on an intrastate voyage. While the facts are not the same, the shipowner there raised the same issue as does petitioner, claiming that the jurisdiction of a tort is governed by the place of injury under the Jones Act.

This Court rejected such theory and Mr. Chief Justice Stone probed the fundamentals of the Jones Act jurisdiction and pointed out that neither maritime rules nor our admiralty law had previously provided a remedy for negligence against an employer, and that the Act was an enlargement of our substantive law and was not restrictive in its remedy, holding "that there is nothing in the legislative history of the Jones Act to indicate that its words 'in the course of his employment' do not mean what they say" and concluded that the Act applied whether the vessel engaged in interstate commerce or not, stating (p. 42):

> "The right of recovery in the Jones Act is given to *the seaman as such*, and as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends *not on the place where the injury is inflicted* but

on the *nature of the service* and its relation to the operation of the vessel plying in navigable waters." (Emphasis ours.)

On the facts herein, there is no valid basis for the rejection of Jones Act jurisdiction in favor of Danish law.

Petitioner's argument also proceeds on the assumption that there was a valid contract to apply Danish law. This issue was presented at the trial below and it was found that there was no binding agreement.

It is axiomatic that Articles are a simple contract covering voyage and wages, and everything else is governed by the maritime law of the state where the contract is entered.

Petitioner's counsel conceded that the Articles called for an "indefinite service". They also failed to set forth the places and duration of the voyage. Thus they were vague, ambiguous and void under our law and are to be liberally interpreted in the seaman's favor.

In *"The Quoge"*, 261 Fed. 414, affirmed 266 Fed. 696, 4 Cir., 1920, Articles, calling for a voyage from Baltimore to any port in the world, wherever the Master directs, and return to the United States, not exceeding six months, were vague and uncertain as to the voyage and the services contemplated. The law is so well settled that a further citation of cases is unnecessary.

In this case, the Articles were even more repugnant in failing to state the extent of the voyage or its duration. The provision that the seaman could be discharged in any port, for any reason, on seven days' notice, is unconscionable and a flagrant disregard of American law on the subject.

As this Court held in *Garrett* v. *Moore-McCormack*, 317 U. S. 239, 63 S. Ct. 246, while considering the validity of a release, a seaman "may not be technically incapable of signing a contract", yet, as wards of the Court, any contract signed by them will be scrutinized closely and if any advantage to the shipowner is not compensated by extraordinary benefits, it will be set aside as inequitable.

Here we have an inequitable contract and its provisions were properly interpreted for the benefit of the seaman, and the finding below that the Danish law was not binding on the respondent should not be disturbed.

Thus no issues of fact or law are presented in this case which differ from the rulings in the *Kyriakos* and *Taylor* cases.

On the contrary, the matters herein were decided in harmony with our public policy, our laws, and the principles established by this Court, leaving no issues to be reviewed under this petition.

POINT IV

The cases cited by petitioner create neither conflict nor doubt as to the soundness of the decision below and require no action by this Court.

Petitioner offers three cases (p. 6) which he claims are in conflict with the decision below. Neither the facts nor the precise questions of law therein bear the slightest resemblance to the subject situation which would justify any inference of disharmony in basic principle.

In *New York Central R. R. Co.* v. *Chisholm*, 268 U. S. 29, 45 S. Ct. 402 (1925), an American railroad worker, injured while his train was in Canada, sued under the Federal Employer's Liability Act and recovery was denied.

The precise point at issue was the absence of any express authority in the F. E. L. A. for extraterritorial jurisdiction or circumstances inferring such purpose.

Both elements are present in the Jones Act.

As Mr. Justice Stone pointed out in *O'Donnel* v. *Great Lakes Co.*, supra, the circumstances of a seaman's services necessitated the extension of the act to include injuries on the high seas or in domestic and foreign ports. It is also implicit in the very words of the act "in the course of his employment", that the nature of the services and not the

place of injury should govern. Thus the fallacious inference drawn from the *Chisholm* case has no application herein.

Jamison v. *Encarnacion*, 281 U. S. 635, 50 S. Ct. 440 (1930), offers no conflict in facts or law with the issues in the subject application.

A stevedore who was assaulted by his foremen received benefits under the Jones Act, thereby enlarging its scope.

Petitioner makes no greater claim for this case than it affirmed the necessity of establishing negligence under the Jones Act.

Since the record in the subject matter discloses proof, charge and findings of negligence, no disharmony can be found between the two cases.

Cortes v. *Baltimore Insular Line*, 287 U. S. 367, 53 S. Ct. 173 (1932), petitioner argues, holds that some element of negligence must occur in the United States to secure jurisdiction under the Jones Act. That is not correct.

The facts in the *Cortes* case concern an American seaman in American waters, and how petitioner arrived at this unique conclusion escapes us. It is contrary to the express ruling of this Court in *O'Donnel* v. *Great Lakes Co.*, supra, which held that the nature of the service, and not the place of injury, governed.

In *Plamals* v. *S. S. Pinar Del Rio*, 277 U. S. 151, 48 S. Ct. 151 (1928), an injured foreign seaman, who had signed on in a foreign port, libeled the vessel.

The Court held that the Jones Act contains no authority to secure jurisdiction by way of a libel.

Naturally, the applicability of the Jones Act was not at issue and was not ruled upon.

But petitioner's conclusion that this Court had left open the question of whether the "Law of the Flag" or our statutes apply to foreign seamen and foreign vessels is negated by the argument and cases cited in Point II, supra.

Uravic, Administratrix v. *F. Jarka Company, Inc.*, 282 U. S. 234, 51 S. Ct. 111 (1931), reversing 252 N. Y. 530, overruled the archaic view entertained by the Court of

Appeals of the State of New York and enlarged the scope of the Jones Act to give relief to longshoremen injured on foreign vessels.

On page 9 of his brief, petitioner quotes Mr. Justice Holmes as authority for the novel conclusion that this case held that the applicability of the Jones Act to foreign seamen was left open.

On the contrary, the clear and unmistakable import of the words

> "*If* it should appear that, by valid contract or special circumstances, seamen on a foreign ship *should not* be protected by the statute, it will be time enough to consider the exception when it is presented" (emphasis ours)

indicates that Mr. Justice Holmes considered the Jones Act applied to seamen (not exclusively American seamen) on foreign vessels.

The conclusion is unmistakable that it is only "*if*" at a later date some "*special circumstance*" or "*valid contract*" were to be presented, it would then be time to consider the *exception.*

It is respectfully submitted that such circumstances do not prevail in this case and this Court did not find those circumstances in *Gerradin* v. *United Fruit,* 51 F. 2d 417, cert. den. 287 U. S. 642; *Gambera* v. *Bergotty,* 132 F. 2d 414, cert. den. 319 U. S. 742, and in the *Kyriakos* and *Taylor* cases, supra.

In *"The Paula"*, 91 F. 2d 1001, cert. den. 302 U. S. 750 (1937), a German seaman signed on in Chile, on a Danish vessel, for a voyage to the United States. The vessel was libeled.

The two vital and pivotal factors of signing on in Chile and libeling the vessel distinguish *"The Paula"* from the subject facts. Besides, a reading of the record in this prior action demonstrates that not all the pertinent facts were in the testimony, preventing a definitive ruling.

In *Sonneson* v. *Panama Transport Co.,* 298 N. Y. 262, cert. den. 337 U. S. 919, the record in the State Court indi-

cates that the applicability of the Jones Act was not questioned by the defendant owner. Although flying a Panamanian flag, it was a subsidiary of the Standard Oil Company of New Jersey and was definitely liable at least under the doctrine of *Gerradin* v. *United Fruit*, supra.

For some unaccountable reason, the State Court, although the point was not at issue, ruled that it would not give effect to the Jones Act. Such limitation, by a State Court, of its own interests, does not concern this Court and certiorari was properly denied. This obvious divergence is of local concern and is of no import herein.

It is noteworthy that in *Resigno* v. *Jarka* (1928), 248 N. Y. 225, the New York Court of Appeals refused to give relief to another of its citizens, a longshoreman. (No application for certiorari.)

In *Uravic* v. *Jarka*, supra, on the same facts, the New York Court again refused relief to its citizens.

But this time this Court granted certiorari and unanimously reversed the State Court.

Nevertheless, in the *Sonneson opinion* (p. 36, pet. brief) Judge Desmond cites the *Resigno* case as authority for the decision, totally ignoring this Court's reversal of the *Resigno* State doctrine in the *Uravic* case.

O'Neill v. *Cunard White Star Ltd.*, 160 F. 2d. 246, concerns a foreign seaman aboard a foreign vessel with articles signed in a foreign port. The essential jurisdictional element of signing on in the United States is missing.

The other cases, cited (p. 12, petition) but not discussed, do not support petitioner's unwarranted assumption that they stand for the proposition that the "law of the port has been applied *only* when the events occurring on board foreign vessels in our ports were of such nature as to effect the peace and tranquillity of the port." (Emphasis ours.)

The Scotland and *The Belgenland*, supra, unequivocally disaffirm this theory. They applied congressional statutes to foreign owners covering collisions on the high seas. The dicta regarding wages has since been reversed in the *The Bark Eudora* and *Strathearn* cases. Even if the juris-

dictional base had not been subsequently enlarged by this Court, these cases support respondent's position in requiring foreign owners, who can secure the protection of our laws, to be equally amenable to its obligations.

Wildenhus's Case, 120 U. S. 1, and *U. S.* v. *Rodgers*, 150 U. S. 249, cover criminal matters. The correct exercise of police powers cannot be interpreted to represent a limitation of jurisdiction only to those instances where peace and tranquility is involved.

In *Thompson Towing and Wrecking Association* v. *McGregor*, 207 F. 209, 6 Cir., 1913, a Michigan seaman, serving on a vessel of Michigan registry, recovered for an injury in Canadian waters, in an action antedating the Jones Act. Here, too, petitioner's lex loci delicti argument is nullified. The decision is in harmony with the Jones Act and the Death on the High Seas Act. There is no conflict.

In *Grand Trunk Ry. Co.* v. *Wright*, 21 F. 2d 814 (1927), a Canadian seaman, on a Canadian operated ferry (American ownership not pertinent), was injured in American waters. It was held that United States courts had no jurisdiction. The element of signing on in the United States was missing. The affirmance by this Court in 278 U. S. 577, appeared to be based on the grounds that the Statute of Limitations had expired.

Thus none of the cases cited are in conflict with the rule herein.

Petitioner has also extracted and cited a number of quotations from the prevailing and dissenting opinions in the *Kyriakos*, *O'Neill* and *Taylor* cases. Since these quotations have been culled out of context, they do not accurately reflect the opinions or the thought processes of the Judge, unless the import of what preceded and followed is likewise set forth.

For example, after citing the old "Law of the Flag" cases, petitioner, in his brief(p..34), states that this rule is "very much alive" and quotes a small portion of a paragraph of Judge A. N. Hand's opinion in the *Kyriakos* case.

The quotation refers to the existence of the rule "in the absence of any statute". We have a statute herein which supersedes the rule under appropriate factual and jurisdictional conditions.

The lengthy paragraph from which that short quotation was culled is not continued, but if it were, the Court could see that in Judge Hand's opinion the "Law of the Flag" was superseded by the Jones Act, and very cogent reasons were offered for its application.

We are rather puzzled by petitioner's peroration on page 13 of his petition wherein he claims that "social justice" demands that the "Law of the Flag" be applied, so that a seaman can get relief from a Consul; otherwise, a seaman's rights under Danish law for something akin to compensation would be retarded. He then cites *Farrell* v. *United States*, 336 U. S. 511, without stating its import.

If it were true that the Danish law is more liberal to the seaman, then why is petitioner objecting to liability under the alleged less liberal Jones Act?

And what of those foreign vessels whose governments do not offer "social justice"? Would petitioner agree that they should be subject to the Jones Act?

Neither the cases cited nor the argument presented by petitioner furnish a sound base for review herein.

The true reason for this application can be found in the rather novel fifth "reason" assigned for review herein. Petitioner says (p. 13):

> "As a result, *foreign shipowners*, operating vessels which call at United States ports, *of which there are a great number*, have been unable to determine the exact extent of their liability to foreign seamen signed on in the United States for personal injuries occurring aboard their vessels." (Emphasis ours.)

It would have been more accurate had he said that such foreign owners wish to evade the liability which American law imposes on all who use our ports. Certainly the language in the *Kyriakos* and *Taylor* cases, supra, is understandable even to a layman. The exact extent of their

liability is clear. What petitioner is seeking is not a clarification, but a reversal, of policy.

This statement, coming from the petitioner, is particularly significant since it confirms our contention that the interested foreign owners, "of which there are a great number", are not isolated and transitory visitors, but are regular carriers in our shipping trade, constantly hiring seamen in our ports, seeking only those who, they hope, will not be subject to our laws. The stake evidently is substantial, for an appeal on so small a judgment as herein is not lightly undertaken.

Thus these "large numbers of foreign shipowners" want to have their cake and eat it too, in being free to compete with our Merchant Marine and free from the liabilities imposed by our laws.

CONCLUSION

There being no conflict or disharmony between the decision below and the rule as stated in prior adjudications, the petition should be denied.

Dated: New York, September 10, 1952.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR THE PLAINTIFF-RESPONDENT

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR THE PLAINTIFF-RESPONDENT

The Questions Presented

(1) Are foreign owners and operators subject to the liability of the provisions of the Jones Act (Section 33 of the Act of June 5, 1920, c. 250, 41 Stat. 988, 1007, Title 46, U. S. C. A., Sec. 66) in those instances wherein they sign on, in a port of the United States, foreign seamen to serve aboard vessels of foreign registry, and such seamen are injured on the high seas or in a foreign port?

(2) Are foreign owners and operators who regularly engage in the carriage of American commerce, and employ vessels of foreign registry for that purpose, subject to the liability of the aforesaid Act in those instances wherein they sign on, in an American port, foreign seamen for service aboard such vessels, when such seamen are injured on the high seas or in a foreign port?

And in a broader measure:

(3) Are foreign owners and operators who regularly employ vessels, registered under foreign flags, in the carriage of American commerce from and to and to and from ports of the United States, subject to the provisions of this Act, and can any foreign seamen serving aboard such vessels, receive the benefits under this Act, in the Courts of the United States, regardless of the place of signing on or the place of their injury while in the service of the vessel?

(4) Shall the jurisdiction and the appropriate laws of a nation govern and be applied to foreign owners and operators, of one or more vessels of foreign registry, who are regularly engaged in the carriage of the ocean-borne commerce of that nation, in those instances where claims are made by aliens or citizens, arising out of occurrences on the high seas or other foreign ports, while the vessel or vessels are engaged in the carriage of that nation's commerce?

(5) Shall such claimants have the election, to select the forum of the vessel's flag, subject to the laws of its flag, or to select the forum and the obligations imposed by the laws of any nation in whose commerce the vessel was engaged when the claim arose?

The Statute Involved

Section 33 of the Act of June 5, 1920, C. 250, 41 Stat. 988, 1007, Title 46, United States Code, § 688, known as the Jones Act, reads as follows:

"SEC. 33. That section 20 of such Act of March 4, 1915, be, and is, amended to read as follows:

'SEC. 20. That any seaman who shall suffer personal injury in the course of his employment may, at his

election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.'"

Statement of Facts

In considering the larger issue herein, we cannot confine ourselves to the necessarily limited area of proof required in the Trial Court below under the prevailing rule of law in the second circuit. The record, however, does indicate that plaintiff-respondent signed on a vessel regularly engaged in the American Shipping Trade.

It is also a matter of public record that this petitioner has been directly engaged in such trade, for many years, operating out of our ports.

Likewise, it is a matter of common knowledge that flagrant abuses of our hospitality are being practiced by other allegedly foreign ship owners who conduct their business in the United States in the names of foreign corporations, flying the flags of still other foreign lands, as a device to evade the obligations of our laws.

The record below discloses the following facts:

Both parties are Danish citizens.

Respondent, a seaman, signed Articles in New York on July 25, 1946, to serve aboard the SS Randa, a Danish flag vessel, for a voyage from and to New York (fols. 75, 138). The Articles merely stated "a voyage to South America and other places".

Petitioner admitted that the Articles called for an indefinite service (fols. 139, 145). They also provided for discharge on seven (7) days' notice at any port, and petitioner now claims that their terms called for a limitation of the owner's liability. Thus they contravened the laws of the forum where made, rendering them void and subject to a liberal interpretation in favor of the seaman.

The vessel did return to New York and respondent had a right to expect such return (Pre-Trial Order and admission, fols. 46 and 145).

Defendant's Exhibit A (p. 45), the Articles, show that the last two seamen listed thereon, who signed on with respondent in New York, signed off in New York on October 14, 1946, only six days after respondent's injury in Havana. Thus petitioner's own exhibit nullifies his claim and establishes a voyage from and to New York.

The same exhibit shows that although the vessel flew the Danish flag, *not one seaman* listed signed on or off in Denmark.

The Articles provided for wages at a scale fixed between Danish operators and Unions.

While on the return voyage, petitioner was injured aboard the vessel at Havana, Cuba, on October 7, 1946, while in its service, due to fault attributable to petitioner.

He was hospitalized in Havana, Cuba.

He was returned to the United States aboard another vessel owned by petitioner (fol. 47).

He was again hospitalized at the U. S. Marine Hospital, Ellis Island, N. Y. (fol. 47).

He was paid one week's wages, the equivalent of wages to the end of the voyage, and he received medical care. The proof established and the jury found that he did not receive full maintenance nor any compensation for his injury. Thus there is no basis for petitioner's claim that respondent elected to receive or did receive any benefits under the Danish law.

Service of the summons and complaint herein was effected upon petitioner by serving J. Lauritzen Agency, Inc., a

domestic corporation, at 67 Broad Street, N. Y. C. An affidavit of this service is on file with the papers herein in the U. S. District Court for the Southern District of N. Y.

Attorneys for petitioner appeared herein on May 20, 1947 (fols. 19-21), and interposed an answer (fols. 22-27). Such answer did not raise any defense to the applicability of the Jones Act and at no time was the validity, propriety or jurisdiction of the service questioned.

By stipulation dated May 7, 1951, and order entered May 11, 1951 (p. 10), four years later, the amended answer was filed and served.

The Trial Court ruled, and the jury found, that there was no valid agreement to be bound by Danish law.

The question of negligence was proven and submitted to the jury. The jury verdict was in favor of respondent in the sums of $4,052.50 for damages and $215 for maintenance.

On appeal to the United States Court of Appeals for the Second Circuit, the judgment was sustained on the authority of *Kyriakos* v. *Goulandris*, 2 Cir., 151 F. 2d 132, and *Taylor* v. *Atlantic Maritime Co.*, 2 Cir., 179 F. 2d 597, cert. den. 341 U. S. 915.

That the petitioner has been engaged, for many years, in operating a regular business in the transportation of the exports and imports of the United States from and to its ports, is buttressed by the record in "The Paula", 91 F. 2d 1001; "The Grace Lines-West Coast Line, Inc., Pooling Agreement, 1940 A. M. C. 1515; and the open and avowed advertising, over many years, of the regularly scheduled sailings of petitioner's vessels, from and to American ports.

It is a matter of common knowledge, of which this Court can take judicial notice, that the activities of petitioner are duplicated many fold by other foreign operators. The situation is further aggravated in that the supposedly benign influence of the "flag's" protection has brought into the competitive orbit of our commerce, American and alien

residents who organize corporations in foreign lands to own vessels which, in turn are registered in, and carry the flags of, still other foreign nations, none of which have any national interest in the commerce of these vessels, which operate exclusively within our stream of commerce.

For the factual elements of the conditions referred to above, we respectfully refer this Court to the amici curiae brief for *Peter D. Pedersen, et al.*, and the argument herein.

Also worthy of comment on this point, and to be elaborated more fully in the following argument, is the fact that respondent had originally commenced suit against West Coast Line, Inc., as well as petitioner but the proceedings against this corporation were not continued on the assumption, implicit in the original Answer herein, that the sole issue in the action was one of negligence. For four years, respondent was lulled into the belief that ownership, operation and control and jurisdiction were not at issue. Only with the approach of the trial, did petitioner introduce the issue now before this Court.

Summary of Argument

Foreign seamen signing on foreign vessels in the ports of the United States have the right, under the terms and context of the Jones Act, to institute actions, in the appropriate Courts of the United States, against foreign owners, for damages arising out of injuries received in the course of such service.

Although affirmance of the judgment below is amply justified by the inclusion of alien seamen and owners within the broad scope of this Act, under the circumstances herein, there are more pressing reasons for its applicability and additional bases for the jurisdiction of our courts thereunder.

Assuming, but by no means conceding, that the Jones Act did not include alien seamen as beneficiaries, nevertheless, it is right and proper that the provisions of such Act be

applied for their benefit, under the appropriate conditions present in this case.

First, it is axiomatic that the Courts of the United States have the fundamental power and jurisdictional authority to apply the laws of the United States to aliens who submit to the jurisdiction of this Country by their conduct of a regular course of business in the stream of commerce within its orbit.

Secondly, under the doctrine indicated by JUDGE LEARNED HAND, in his dissenting opinion in *Kyriakos v. Goulandris*, supra, that wherever and whenever it appears that the pressing domestic policy and the overriding national interests of this Country so dictate, the Courts of the United States have the absolute right and duty to assume jurisdiction over, and to apply the laws of the United States to, aliens who affect such policy and interest.

It is clear from a reading of the Kyriakos dissent that it was occasioned by the failure to pose the questions and to supply the supporting facts, which in JUDGE HAND'S opinion, would justify the decision so rightly made.

This suit involves more than a legal contest between two aliens, one seeking the maximum, the other the minimum, assessment of damages.

The petitioner herein is representative of the interests and aims of all foreign owners and many of their governments.

Strangely enough, the stake of the American Merchant Marine, its seamen and the welfare of this Government is greater than that of the respondent and the class he represents, which is by no means small.

The Jones Act comes within the scope of our admiralty principles and laws.

"The fiction of the territoriality of merchant vessels is not established in international law" (*Philip C. Jessup*) and its concomitant rule of the "law of the flag" is not controlling upon any sovereign state.

Due to the legal void on the high seas, such rule had, and may still have some practical justification under limited and appropriate conditions.

When merchantmen were traders, bartering the commerce of the land to which they owed allegiance, and in whose commerce the sovereign had a pecuniary interest as well as that of the general welfare, it might be said that the owning nation had an interest in such vessels superior to that of any other nation.

But the character of vessels has changed from trading to transportation service.

Now the nation whose goods are being carried, replaces the owning nation in having a prime interest in the vessels' activities. By analogy with the "law of the flag", the applicable law now should stem from the nation that is being served. This is especially true when its merchant marine must meet this foreign competition in its own ports.

Thus, the Courts of that nation, whose goods are being carried by foreign vessels, upon acquiring jurisdiction over the foreign owner, have both the right and duty to apply the laws of such nation to such foreign vessels, no matter where the claim arose, for the purpose of establishing parity and equality of law for all who do business within its orbit.

In the absence of universal standards and laws, applicable to and enforcible upon all nations equally, no one nation has the right to impose its laws and standards upon another.

Such conflicts are not resolved by having one nation yield its sovereignty to another.

Each has the right to apply its law in its own jurisdiction.

A claimant may select whatever forum he desires and receive the benefits resulting from such choice.

A ship owner is liable under the laws of the forum where he does business as well as in his own country.

Neither right nor reason accords ship owners the privilege to limit their liability to the laws of the flag they select, and to impose such limitation when operating outside the scope and domain of such flag's law.

Thus, the essential element to be determined on this application, is not limited to the extent of the coverage of the Jones Act.

Of greater significance is the issue as to whether the Courts of the United States have the right and power to protect the overriding interests of this nation and preserve its pressing public policy, by preventing the establishment of an exempt and preferred class of aliens doing business here in competition with our Merchant Marine within the stream of our commerce, and by imposing the terms of our law equally to all engaged in our commerce, citizens and aliens alike.

POINT I

Public policy based on the economic and defense requirements of this nation require that our laws be applied equally to all who conduct a regular business in our stream of commerce, aliens and citizens alike.

At the outset we wish to make perfectly clear that in order to resolve the issue raised by petitioner, we must go beyond the bare facts of the record.

At the trial below, the prevailing rule, then and now, in the Second Circuit was stated in *Taylor* v. *Atlantic Maritime Co.*, supra, to be, that the signing on of a foreign seaman on a foreign vessel, in an American port, subjected the owner to liability under the Jones Act.

In view of this circumstance, there was no issue, and no proof was adduced, as to many matters in the public records, court reports, and those facts which are of common knowledge and of which this Court may take judicial notice.

Since the issue herein is of such importance, it would be manifestly unjust to be confined to the limited facts in the record, without considering the widespread conditions which gave rise to it and upon which a determination must, of necessity, be made.

Thus, the problem is not whether Larsen, and others similarly situated, can recover under the Jones Act merely because he signed on a foreign vessel in New York. Nor is

the question of a voyage beginning and ending in New York, sufficient to dispose of the actual problem involved.

We are confronted with basic legal concepts; equality under our laws; the rights of aliens doing business within our orbit; the nature and jurisdiction of our maritime law; and the effect of public policy and national interests thereon.

Under those circumstances, the issue as to whether or not the Jones Act, standing alone is sufficiently broad in its coverage, becomes incidental to the larger questions, and justifies a more thorough examination of all the factors involved.

Despite petitioner's bland assumption, we are not dealing with an "all foreign" problem remotely affecting the economic welfare and public policy of this country.

Both the facts in this case and the generally prevailing conditions of our shipping industry indicate that foreign owners and foreign flag vessels have usurped a dominant position in the American stream of commerce, to the detriment of our merchant marine and its seamen.

The petitioner, in the instant voyage, for many years prior thereto, and at all times thereafter, consistently operated in American sea-borne traffic. His were not vessels operating out of Danish ports and in Danish commerce. He was doing business in this country. He therefore should be subject to its laws.

A recapitulation of the facts is in order.

Plaintiff-appellant was hired in the United States for a voyage from and to the United States. He was part of a pool of foreign seamen maintained in this country to man Scandinavian vessels and to perpetuate the "Foreign Flag" myth. Notwithstanding petitioner's quibbling as to the indefiniteness of the Articles, there is little doubt that this seaman was advised that he was hired for a voyage from and to New York, and petitioner's counsel admitted that he had a right to expect such a return voyage. The record establishes its accomplishment.

Further, a fair inference to be drawn from such an admission is the fact that such vessel was regularly engaged

in voyages from and to this port. There is ample confirmation for this conclusion.

Defendant's Exhibit "A" (p. 45) definitely establishes the return of the S.S. Randa to New York, six days after respondent was left in the Cuban hospital, as indicated by the signing off of the last two listed seamen, who had signed on with Larsen in New York.

That the petitioner has been operating in our trade for many years is buttressed by the fact that he is the same owner involved in "The Paula" (supra). Thus, long before 1937, his vessels plied between the United States and Chile. Unfortunately, this fact was never forcefully established, or even presented to the Court at that time. The "in rem" proceedings lent color to completely foreign activities. The "law of the flag" was applied in view of the non-disclosure of the true facts.

The amici curiae brief on behalf of Petter D. Pedersen, et al. (pp. 13, 14, 17, 18, 19 and 20 thereof), traces the activities of this petitioner's vessels in the United States.

Prior to 1937, such vessels, registered in Denmark, but engaged in shipping from and to the United States, were operated through Wessel-Duval & Co. Inc. Thereafter, West Coast Line, Inc., took over, and it continues to conduct the operation of these Danish flag vessels in the American trade.

The 1940 A. M. C. 1515, reports a Maritime Commission hearing on a Grace Line-West Coast Line pooling agreement, which specifically finds that the West Coast Line, Inc., Wessel-Duval & Co. Inc., and J. Lauritzen were engaged in a joint operation in the United States to South American trade, with all vessels, of Danish registry, being supplied by petitioner.

"Regular direct service" of these Danish flag vessels, from American to South American ports, has been and is still being advertised in our periodicals.

It is significant that neither Wessel-Duval & Co. Inc., nor West Coast Line, Inc., own any vessels. But they do have a Maintenance Department at 90 Broad Street, New York City. J. Lauritzen, Inc. has its office there. The telephone

numbers are the same. Obviously, petitioner's vessels are serviced and maintained here. All operations are conducted from this country. Only the profits flow to Denmark.

The petitioner did not question the service herein upon its domestic corporate instrumentality and appeared, conceding the jurisdiction of this Court.

At this point, it would be very pertinent to point out that the "confusion" of which petitioner complains is created by his own acts, which tend to conceal his true operations and activities with the obvious intent of creating an impression of completely foreign operation and dominion.

This results in a denial of right and justice.

For example:

The plaintiff-respondent originally commenced this action in the Supreme Court of the State of New York against J. Lauritzen and the West Coast Line, Inc. They both appeared and answered by petitioner's counsel. In conferences, it was indicated, as pleaded in the Answers, that Lauritzen would not deny ownership and control and that West Coast merely considered itself as a husbanding agent.

Since such admission by petitioner eliminated the necessity for proof of ownership and control and since Lauritzen was financially responsible, it was agreed that the action against West Coast would be discontinued and the instant action would be instituted against Lauritzen alone. The only issue, on the pleadings, was that of negligence.

For four years plaintiff-respondent was lulled into a feeling of security on that score.

Then four years later petitioner reversed his position, amended his Answer, and for the first time raised the question of the foreign flag.

Mildly put, such actions by petitioner, calculated or not, constituted an unfair and highly prejudicial course of conduct that should not be condoned.

It was made possible only by reason of the devious course of business conduct pursued by this petitioner and his affiliated American companies.

Unquestionably, this petitioner has been occupying an important position in our commerce. It seriously affects our trade, witness the pooling arrangement with the Grace Line, a subsidized American carrier with whom it competes.

This activity has no direct relationship to the Danish trade, except in siphoning off profits earned in our trade.

Here we have more than merely the jurisdiction acquired by coming into our ports. Lauritzen's vessels are no casual visitors. They have been regularly in our ports for many years. They are serviced here by the Maintenance Department of West Coast Lines, which owns no vessels requiring maintenance. Lauritzen organized companies bearing his name, which have common offices with West Coast Lines. Such operations and activities over the years vitiate the flimsy veil of the foreign flag and demonstrate that Lauritzen has been and is now doing business here. His activities are American from inception to conception.

It is interesting to note that petitioner indirectly, and probably subconsciously, conceded the truth of the above statements and inferentially conceded liability.

On page "65" of his brief he refers to the *Taylor* case and points out that the defendant in that case had been a recent listee as a Panamanian owner of ten ships, previously owned by our Government, and that it was indicated

> "that the true situs of the control and operation of this vessel flying the Panamanian Flag was in the United States".

It is noteworthy that he did not add the word "ownership" to the American situs.

Thus we can assume that he seeks to distinguish the *Taylor* case from this one in that "the true situs of operation and control was in the United States", while in the subject case it was not.

Yet it is significant that in stating his status he carefully uses the ancient form of a "negative pregnant" (p. 63, Pet. Brief):

> "There is nothing in the record and in the final judgment in this case to indicate that the S.S. *Randa* was

not a legitimate Danish vessel flying the Danish flag, registered in Denmark and owned and operated by the Danish petitioner" (Pre-Trial Order, 16).

This statement is not an averment of its truth.

It does not even declare that the vessel was operated and controlled from Denmark.

It merely declares what petitioner claims the state of record to be, and not whether it is true or false.

It must be kept in mind that when the Pre-Trial Conference and the Trial occurred, the law stated in *Kyriakis* v. *Koulandris* and *Taylor* v. *Atlantic Maritime Co.*, supra, prevailed in the Second Circuit of this Court. Such rule gave plaintiff a right of action against a foreign shipowner who signed on any seaman in an American port. Hence, the place of operation and control of this vessel, or its true ownership, was not an essential issue.

Reliance upon a record on a point not at issue and on which no testimony was adduced or required as a matter of prevailing law, is indeed a slender reed for the support of a statement which is contradicted by public records and published statements.

The least we can expect of Lauritzen is to require him to conform to our laws and be on legal parity with our merchant marine while competing for American commerce.

Let it be clearly understood that this is not an argument restricting the freedom of competition or hindering international trade. Nor is it discriminatory. We seek parity.

Certainly we have a right to expect the courts of this country to apply its laws to all who do business here.

Petitioner's activities are not isolated instances in our commerce. There are many other foreign shipping lines likewise engaged in these practices. And there are also aliens devoid of all national loyalties, resident here, who form corporate enterprises in countries other than their own; such enterprises own and ostensibly operate vessels in our trade registered under the flags of still other foreign nations. Through the conniving of such foreign corporations and registries, they demand immunity from our laws whilst operating in our midst.

A bulletin of the Department of Commerce on "Foreign Trade-Water Borne", dated October, 1952, lists the imports and exports carried from and to the United States for the past six years:

TABLE A.—PERCENT OF CARGO TONNAGE CARRIED ON UNITED STATES FLAG VESSELS IN THE UNITED STATES EXPORT AND IMPORT TRADE: 1946-51

	Percent carried on United States flag vessels				
	Total	*Dry cargo*		*Tanker*	
Year	*trade*	*Exports*	*Imports*	*Exports*	*Imports*
1951	40	38	36	25	50
1950	39	31	32	43	55
1949	45	36	36	37	71
1948	48	40	47	32	76
1947	54	51	54	36	75
1946	60	61	56	40	76

Source: Bureau of the Census, Foreign Trade Division, Summary Reports, FT 973, United States Foreign Water-Borne Trade by Trade Area.

These figures show that the respective positions of foreign and American shipowners have been reversed. In 1946, we carried 60% in our bottoms, 40% in those of foreign flag vessels. In 1951, as we carried only 40%, while foreign vessels carried 60%.

There has been a steady deterioration of the position of the American Merchant Marine and the seamen dependent upon it.

The situation would have been much worse had it not been for the 50% of the Mutual Security Cargos required to be shipped in American bottoms.

There is no need to elaborate on the public policy of our Government, since 1915, in its attempt to build up our merchant marine, both for economic necessity and as an adjunct to our navy for defense purposes.

These attempts are being thwarted not merely by the lower operating costs of foreign lines, but by their ability to do business here in the United States, without being subjected to our laws. This places an insurmountable handicap in the way of our operators.

This Court has taken cognizance of this problem in *Warren v. U. S.*, 340 U. S. 523, 71 S. Ct. 432 (1951), where, in discussing "The Shipowner's Liability Convention" and its relation to American efforts to raise foreign standards in an attempt to equalize operating costs, MR. JUSTICE DOUGLAS on page 527 said:

> "We find no suggestion that it was designed to adopt a more strict standard of liability than that which our maritime law provides. The aim indeed was not to change materially American standards but to *equalize operating costs by raising the standards of member nations to the American level.*" (Emphasis ours.)

The difficulties are largely occasioned by the very many foreign flag vessels which operate out of our ports, and rarely have any commerce with the country of their registry. Many nations have vessels registered under their flag, far in excess of their national requirements.

The records of the New York Customs House, of vessels entering and leaving the Port of New York, from July 1, 1951 to June 30, 1952, support this conclusion. Just a few of such countries are listed below:

Country	*No. of Vessels Enter*	*No. of Vessels Clear*
Denmark	297	295
Honduras	112	110
Liberia	146	149
Norway	1059	1063
Panama	364	364
	1978	1981

See appendix "A" for complete Report.

Since only 3,525 American vessels entered and 3,420 left New York Port, many of which were coastwise vessels, we can readily see that these vessels registered in the five nations listed above, having a comparatively negligible foreign commerce of their own, have carried a very substantial portion of American exports and imports, from and to ports other than the nation of their registry.

We might add that many other nations not listed above also have their vessels engaged in American commerce, divorced from trade with the country of their flag.

Furthermore, it is notorious that many shipowners owe no loyalty to the flag they fly. As set forth in the amici curiae brief for Petter D. Pedersen, Greek nationals, living in and operating from the United States, control substantial numbers of vessels owned by Panamanian corporations formed by them, flying Panamanian, Honduran and Liberian flags.

To facilitate the American business of their flag vessels, the Danish, Norwegian and Swedish Unions maintain a hiring hall at 156 Montague Street, Brooklyn, New York. In the amicus curiae brief of the Norwegian Government, on the petition for certiorari, served upon counsel but withdrawn before filing, there was a statement that 7,000 Norwegian seamen signed on vessels in New York, in the course of a year. Actually, we have been advised that the number is substantially greater.

These Unions are closely allied with their Governments. Please note that on page "5" of the amicus curiae brief of the Danish Government, filed herein, the opinions of the Union, as well as the shipowners, were secured before such brief was filed. There is no question but that such Unions are closely allied, if not completely subsidized and dominated by their Governments. Nevertheless, they act as an employment agency here in the United States for the vessels operating out of our ports, vessels which claim immunity as being foreign and remote from our commerce.

These Unions, their Governments and owners maintain medical centers and quarters for their nationals in this country.

Without such facilities, they could not maintain a pool of foreign seamen to operate these "foreign" vessels in our trade, perpetuating a fiction that should have been eliminated long since. Any seaman part of this labor pool in the United States is entitled to the protection of its laws.

It is also noteworthy that they use American facilities as well. Larsen was treated in American hospitals. This is a general practice when their clinic facilities here are found to be inadequate. We should not ignore the fact that such medical and hospital costs are borne in a measure by American taxpayers, since charges for such services are invariably below their cost.

Many of these foreign operators have established agencies to conduct their business here, some of them bearing the name of the parent company. J. Lauritzen—J. Lauritzen, Inc.; Fernley & Eger—Fernley & Eger, Inc.; Oivind Lorentzen—Oivind Lorentzen, Inc.; Wilhelmsen—Barber Steamship Co., formerly and commonly known as Wilhelmsen-Barber Line. An inquiry to such agents quickly elicits the same refrain—"we do not operate—we are only husbanding agents—everything is controlled from abroad".

This is a myth. There is no reason why such patent subterfuges should receive judicial blessings.

Foreign citizens are not the only one profiting from the confusion created by divorcing ownership, operation and flag registry. The present state of the law affords Americans, as well, the necessary subterfuge to secure the anonymity of the foreign flag.

For example, Nicholas Karaganis, a Greek seaman in this country since the early 1940s, shipping in our merchant marine, and who had made arrangements to apply for citizenship, died as a result of the negligence on the part of a domestic corporation, owning and operating a vessel, registered in, and flying the flag of, Liberia.

Strangely enough, Karaganis' old mother was appointed guardian of his two infant children and a "suit" was instituted in the Court of Peace at Athens, Greece, to recover the nominal amounts payable under a Greek compensation statute. Within two months this "suit" was settled.

It is a cause for wonder how a Greek Court could so readily secure jurisdiction and apply its laws so quickly against an American corporation and a "Liberian" vessel, in connection with an injury that occurred elsewhere.

Suit was thereafter commenced in this country under the the Jones Act.

The defense was not merely the release, but that the Jones Act does not apply to a "Liberian" vessel and that under the rule of the "Law of the Flag" only Liberian law was applicable. Evidently these owners were and are ready to invoke any law relieving them of liability.

Or we have the case of Aage R. Mortensen, a Danish citizen who, with his family is a resident of America, was injured aboard a Honduran vessel, owned by a Honduran corporation, which we have every reason to believe is owned, controlled and dominated by an American shipping company.

Mortensen lost his eye. As soon as he returned to the United States after the accident, the American company, without permitting or suggesting the benefit of the advice of an attorney selected by this seaman, advised him that he was only entitled to compensation under Honduran law. But to help him out, the American company would get for him a relatively nominal sum for his injury and save him litigation in Honduras.

A lawyer, to represent him, was hired in Florida by the company; the seaman was flown from New York; suit was instituted; a trial was started; a settlement effected and judgment entered; *all within one day.* A motion to dismiss a subsequent complaint on the grounds of res judicata was denied on the allegation of fraud.

The obvious heartlessness and cruelty of these acts are made possible only because of the ability of shipping com-

panies to hide behind the fiction of the territoriality of a vessel.

Thus, in addition to the unfair competition, the rule in question makes it possible for fraud and deception.

It is a sword directed against the United States and seamen, whether wielded by actual foreign owners flying the flag of their country, or those who use the flag of another nation as a subterfuge.

A rule of law which is so harmful to the national host, and to seamen, merits no consideration. And, as will be demonstrated, it bears no international recognition.

Petitioner rightly states that trade and comity is a "two-way street", implying retaliation.

Let us look at the record. How well do American vessels fare at the hands of foreign Governments?

In the Report of the Hearings before the Sub-Committee on "Merchant Marine and Maritime matters, of the United States Senate, 82nd Congress, 2d Session, on Discriminatory Acts of Foreign Governments, affecting our Merchant Marine, April 4, 1952", with Senator Magnussen presiding, printed by the Government Printing Office, on pages 71, 72, 73, the testimony established that the Governments of Greece, Spain, France and Holland have influenced shippers not to use American flag vessels which could give equal, if not preferred, service. The discrimination on the part of South American countries was even more openly flagrant, even if not so successful in effect.

On page "74" of this Report of the Hearing, the testimony established that American vessels had participated only in E.C.A. cargoes to Scandinavian countries, 50% of which by law, had to go in American bottoms. However, since E.C.A. diminished

> " * * we have not been able to secure cargo to these countries due to the fact that practically every pound of cargo, either Government or commercial, is instructed to their national flag vessels.
>
> This is a discrimination in itself but it is found to be doubly so when one considers the liberal participa-

tion of their merchant marine in the handling of exports and imports between our country and countries throughout the world outside of Scandinavia."

Yes, trade may be a two-way street, but in the Scandinavian countries it goes only one way.

Under these circumstances, there is very little left in line of additional discrimination to be levelled against us. They have already shot their bolt.

But our plea bears no trace of discrimination.

We seek parity and equality.

Certainly we have a right to expect in matters of law, that our statutes be applied equally and impartially to all who garner their benefits here. None should be permitted to evade their obligations.

That we are not concerned here with merely casual and isolated visits to our shores, by foreign vessels, is attested to by the fact that four foreign Governments saw fit to file briefs amici curiae on the petition for certiorari. Evidently, they too recognize the large number of foreign vessels engaged in our trade and seamen resident in the United States to service them.

Both the Danish and British amici briefs, on the application for certiorari, did not hide the motives for their anxiety. They were interested in securing more of our dollars through cost advantages in by-passing our laws. That undoubtedly was true of the other Governments as well.

We may sympathize with them and believe that our Congress should give greater aid than it is now furnishing, but that is no reason for evading our laws and giving those engaged in our business preferential treatment denied our citizens who will be impoverished thereby. Nor should we destroy our dearly purchased merchant marine on that account.

The argument presented by petitioner on page "24" of his brief concerning congressional policy on indirect sub-

sidies has no bearing on our position, but it could be very aptly applied to the argument for increased dollars.

What petitioner and his supporting Governments are suggesting is an indirect subsidy to them at the expense of our taxpayers, our merchant marine and the seamen dependent upon it, as well as a further nullification of our policy to improve the standards of the merchant marine of all nations to equalize costs. In other words, lax application of our laws gives foreign operators the advantage of costs below that of competing Americans. The business thus taken away from our merchant marine adds to their dollars. The American taxpayer loses not only taxes on lost American earnings but bears the burden of increased subsidies to cover the losses of our merchant marine. The loss to America is not merely the cost differential, rather it is the diverted business volume. Obviously the large price we are asked to pay for so small a gain in insurance premium savings is disproportionate, as well as inequitable.

It is not too much to ask those who earn profitable dollars here to meet their obligations in kind.

It has never been the policy of this Court to legislate benefits for foreign nationals and their Governments in derogation of our laws and our vital interests.

While considering subsidies, it is pertinent to note that our Senate Committee Report on the Foreign Discrimination of our vessels, supra (pp. 2, 100), records that foreign vessels are substantially subsidized by their Governments and enjoy many privileges denied to others and they resist our attempts to secure parity for all operating out of our ports.

As a practical matter, petitioner's argument was ably answered by Secretary of Commerce, Charles Sawyer, in a speech to the Propeller Club at Los Angeles on October 10, 1952, where he said:

> "I am not unmindful of arguments that if our friends abroad were permitted to carry most or all of our ocean shipping, it will improve their dollar earnings. That is perhaps true.

The fact must not be lost sight of, however, that the keystone of the arch of capitalism in this world of today is America. It must be kept strong.

Furthermore, it has been estimated that if foreign lines had carried all of our world trade between 1919 and 1939, they would have earned from shipping alone only 5 percent of their dollar credits.

We could ill afford the destruction of an essential American industry to pay for this small increase in foreign purchasing power" (N. Y. Times—October 11, 1952).

From the very beginning of our national existence it has been the policy of the United States to construct and maintain a Merchant Marine. To that end, we have subsidized and are subsidizing this endeavor. We train seamen for that purpose at Government expense and afford them fair wages and humane safeguards for their safety and health as an inducement to the best elements of our manhood to engage in the Merchant Marine as a life's work.

While subsidies may not be desirable, they are nevertheless essential to our economic well-being and national defense. They are the accepted policy of our Congress and serve as a means to offset lower construction and operating costs abroad. In the same speech referred to above, Secretary Sawyer said, in substance: that, as against $23,000,000,000 in foreign aid, $326,000,000 to support potato prices for two years, $500,000,000 annually in highway subsidies, $100,000,000 for aviation facilities and $200,000,000 for rivers, harbors and dams, the sixteen years of shipbuilding subsidies had entailed only about $350,000,000 in subsidies, which had made possible the construction of more than 250 ships.

As a matter of enlightened self-interest, should we permit foreign operators with lower costs to operate their vessels in the American shipping trade free from our remedial statutes, thus giving them a greater competitive advantage to the further detriment of our Merchant Marine and its seamen?

In keeping with our doctrine of fostering world trade, we do not seek to eliminate foreign operators, or to give any improper advantage to our Merchant Marine. However, in using our ports and facilities and participating in our traffic, foreign operators should be subject to the same laws as are American operators.

POINT II

The historical background of our Admiralty Law supports the application of our laws to all who submit themselves to our jurisdiction and whose activities therein affect our vital interests.

Although this action was brought on the Civil rather than the Admiralty side of the Court, nevertheless, the "Jones Act is an integral part of the maritime law" (*Socony Vacuum* v. *Smith*, 1939, 305 U. S. 424, 59 S. Ct. 262) and the "rights of parties come within admiralty principles and Federal Statutes" (*Garrett* v. *Moore-McCormick*, 1942, 317 U. S. 239, 63 S. Ct. 246).

Therefore, we must seek in Admiralty principles the basis for petitioner's claim for the validity of the "Law of the Flag", the extraterritoriality of the foreign vessel and its immunity from responsibility for the laws of its host.

The ancient sea laws of Oleron, Wisby and the Hanse Towns make no mention of such rule.

Even if they did, we must keep in mind that vessels of those days, even up to the middle of the 19th century, were truly merchantmen. They were traders in the truest sense of the words. They were not carriers in a purely transportation business. Their conditions, methods of operation, sailings and ports of call varied materially from the vessels of today which are the counterpart of our trains and trucks on land and airplanes in the sky. In the slower tempo of those days vessels truly were casual visitors. Hence altered conditions require an altered rule.

History, however, does teach us that from the days of the conflicts between the Greek City States, Rome and Carthage, and amongst the continental maritime nations between the 16th and 18th centuries, the power of the sword superseded any nebular rule of law.

Philip C. Jessup in his "The Law of Territorial Waters and Maritime Jurisdiction" (1927) traced the rule in question.

He states that the British considered their sovereign power as absolute and exercised jurisdiction over foreign vessels without considering that excuses were necessary (p. 175).

He also states the American view to be similar to the English one, in that we vigorously rejected the fiction of the territoriality of merchant vessels and claimed the full legal power of the local sovereign to exercise its jurisdiction over foreign vessels in its ports (p. 191).

He concludes (p. 191):

> "It may be definitely asserted that the fiction of the territoriality of merchant vessels is not established in international law."

This conclusion is not restricted to the "peace and tranquillity" area. It includes civil jurisdiction, as well.

As early as 1790, in "The St. Olaf", 2 Pet. Adm. 428, a wage claim was litigated in our courts over consular objection. This case was cited by Jessup.

This acceptance of jurisdiction in suits between aliens and application of our maritime rules was extended to salvage, bottomry, collisions and other areas.

Discretionary rejection of such suits merely indicated lack of interest, not lack of power.

With seamen lacking the right to sue their employers for torts, until the advent of the Jones Act, there obviously could be few early citations on this subject, and we must depend on powers exercised in related fields and the expressions of our national policy in promulgating and accepting International Rules.

John Bassett Moore, in his "International Law Digest", confirms the Jessup conclusions by citations from American State Papers.

In Vol. 2, Sec. 204, p. 272:

> "The jurisdiction of every independent nation over the merchant vessels of other nations lying within its borders is absolute and exclusive (Mr. Buchanan, Sec. of State to Mr. Wise, Min. to Brazil, Sept. 27, 1845)."

There are no restrictions in this assertion of sovereign rights. Whatever limitations were imposed by our courts, confined to an exercise of discretion in each instance, were either for reasons of comity, or in the final analysis for lack of interest, to the United States, in the subject matter.

In the same volume, Sec. 205, page 297, after a discussion of the obligations of private vessels in foreign ports, the following rule was set forth:

> "Of course no exemption is ever claimed for injuries done by the vessel to property or persons in port, or for acts of her company not done on board, *or civil obligations,* or duties relating to persons not of the ship's company (Dana's Wheaton, Sec. 95, note 58)". (Emphasis ours.)

Thus a series of exceptions to the alleged immunities of foreign vessels is set forth.

It is clear that no vessel is free from the civil obligations of the port, and it must meet those obligations, whether arising from laws or from matters of public policy or national interest, equally with the vessels of its host.

This obligation, when taken together with the statement of our policy laid down by Mr. Randolph, Secretary of State, April 13, 1795 (Vol. 4, page 10, Moore's Digest):

> "Aliens in general, being within our limits and jurisdiction, are bound to respect our laws, and cannot exact any other mode of promulgation than that which is marked out for the information of our citizens.":

establishes the legal basis and national policy, since our nation's infancy, to hold aliens accountable for the observation of our laws, equally with our citizens.

The respondent takes the position that, based on our accepted national principles cited above, a vessel entering an American port has a civil obligation, when engaging in the commerce of that port and nation in competition with the merchant marine of that nation, to abide by the basic laws which govern its activities. As a matter of pressing public policy and overriding national interest, this must be observed to avoid the unfair advantage which would accrue to such foreign vessel , reason of its immunity to laws of its host. The point will be treated more fully in the unfolding of this argument.

An alien, under the policies of this Government has full recourse to our courts:

> "The policy of the United States in all cases of complaints made by foreigners is to extend to them the same means of redress as is enjoyed by our citizens" (Moore's Digest, Vol. 4, Sec. 536, p. 7).

In keeping with these broad sovereign powers our courts have constantly developed new concepts to meet the demands of our changing society and economy, widened their areas of jurisdiction, and broadened the fields of relief available to all who seek redress. Our legislation has kept pace with such development. And this was accomp'ished, in one of its most dramatic forms in the very activities with which we are concerned.

This process has not as yet ended. Nor will it end with this litigation. Most certainly it should not be set back by invoking outmoded rules not in harmony with our public policy and national requirements, or the needs of our times.

From the inception of our national existence, our Congress and our Courts filled the void left by the inadequacy of the then existing admiralty rules and their conflicting application by other nations.

The Maritime Laws of the United States have been developed through the blending of ancient admiralty principles with modern concepts of jurisprudence.

We are not bound by "general maritime law". There are no such fixed and undeviating rules finding international acceptance. The "Law of the Flag" rule itself, with far more than one "flag" asserting its dominance, connotes the sovereign right of each nation to accept or reject such law.

In the realm of seamen's rights it is wrong, in the United States, to apply, what, in this age, would be the harsh rules of old admiralty or even common law principles. Seamen, as wards of the Court, are protected by exceptions to such rules, which were developed through the years by judicial processes or legislation, both of which enlarged and extended their areas of protection.

Despite attempts to cling to the old rules, and the encroachments of the common law and principles of workmen's compensation, the law of admiralty merged these conflicting rules to form a distinct and separate body of law.

The Judicial and Legislative development of our doctrine in applying the "Law of the Forum" rather than the "Law of the Flag" naturally grew and kept pace with the economic development of these United States and its vital interests. Concurrently, and in all possible areas, it has also been our avowed policy to avoid unilateral action. We do endeavor to enlist international support for conventions standardizing maritime conditions and rules throughout the world to raise standards to our levels. But we do not and should not delay the improvement of our standards while waiting for foreign nations to catch up with our pioneering pace. Nor should we permit them to hinder our progress. Until complete success attends our efforts in raising foreign standards, as a matter of preserving our own national interest, we must apply our laws within our orbit and sphere of influence. We cannot abdicate in favor of foreign rules in derogation of our rights and standards.

Some of the cases and statutes illustrative of this historic development are:

The Scotland, 105 U. S. 24 (1881), and *The Belgenland*, 114 U. S. 355 (1884), are admiralty cases involving collisions on the high seas. While not directly in point, they do clearly enunciate the doctrine that our Courts will apply the Maritime Law, as fixed by our legislature and accepted by our Courts, to foreign owners and vessels for events occurring on the high seas. Thus, the "Law of the Forum" superseded the "Law of the Flag".

While there was some dicta in these cases that the "Law of the Flag governed seamen's contracts" and "internal affairs of the vessel", such dicta was overruled by succeeding rulings of this Court in the *Patterson, Strathearn* and *Titanic*, cited infra.

In *Patterson* v. *Bark Eudora*, 190 U. S. 169 (1903), the question concerned the application of an American Seaman's Wage Law, enacted by Congress, to foreign seaman. The power of Congress was upheld, with the Court negating the claimed "flag" rule, stating (p. 176):

> "Yet when a foreign merchant vessel comes into our ports, like a foreign citizen coming into our territory, it subjects itself to the jurisdiction of this country."

The Titanic, 233 U. S. 718 (1913), broadened the base of the application of our laws to two foreign citizens of the same nationality for a tort on the high seas.

It is significant that the British claimant, Mellor, in opposing the application of the British shipowner for relief under American limitation statutes, offered the same arguments as does the petitioner herein.

It was claimed that on land the lex loci delicti was universally applied; that on sea it was the law of the flag; that the vessel flying the British flag made British law the lex loci delicti, thereby fixing the limit of its liability; and that the statutes of a State or Nation have no extraterritorial effect, otherwise a shipowner would be subjected to

different liabilities in different jurisdictions for the same event.

Mr. Justice Holmes disposed of the last argument by holding that the fact that the British owner might be sued in many jurisdictions, subject to local rule in each case, with divergent results and different liabilities, was not a valid reason for denying application of the American statute. The diverse nationalities of the various claimants was not controlling, since there was a separate appeal filed by the British subject.

While it is true that British tort obligations are generally created by British law, Mr. Justice Holmes noted the well recognized exceptions when he wrote (p. 732):

> "But it is also true that the laws of the forum may decline altogether to enforce that obligation on the ground that it is contrary to public policy or may decline to enforce it except within such limits as it may impose. Cuba Railroad Co. v. Crosley, 222 U. S. 473, 478, 480. Dicey, Conflict of Laws, 2d ed., 647. It is competent therefore for Congress to enact that in certain matters belonging to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it may mark out."

The Seaman's Act of 1915 was enacted as a result of the pressing need for an American merchant marine during world upheavals, whether we would be at war or not.

This law was intended for the benefit of all seamen, since at that time we admittedly had to depend on foreign seamen to man our vessels. That it applied to foreign owners and seamen is implicit in the mandate to the President to abrogate all treaties giving foreign consuls authority over their national seamen in our ports.

It is significant that all subsequent conventions afforded such foreign consuls a very limited and, in effect, merely courtesy and advisory capacity. Each such convention expressly limited any power on the part of such consul by the words:

> "* * * that such jurisdiction shall not exclude the jurisdiction conferred on local authorities under existing or future laws."

If local courts had jurisdiction, then assuredly federal courts had equal authority.

The alleged congressional quotations on page 20 of petitioner's brief, indicating that "some" members of Congress were not happy about the application of the 1915 Act to foreign ships, is as clear a demonstration as possible of the awareness of Congress that in enacting this legislation it was intentionally including foreign vessels and seamen subject to its provisions. The passage of the Act in the face of such expressions of doubts manifests the intention to include alien seamen within the beneficent provisions of the legislation.

We also desire to incorporate the quotation from a Senate Report set forth on page 22 of petitioner's brief:

> "*No interests but American interests* have been kept in view. We are sure that other nations will look after their citizens and their needs, and if our business is to be cared for, we must do it." (Emphasis ours.)

This is precisely our position.

Vital American interests are involved in the operation of foreign flag vessels in our stream of commerce. Therefore, our laws as enacted by Congress and interpreted by our courts shall apply equally to all, regardless of national origin of the parties. That was the express intention of Congress as indicated in the above quotation.

In *Strathearn SS. Co., Ltd.* v. *Dillon*, 252 U. S. 348, 40 S. Ct. 450 (1919), this Court gave a foreign seaman signing on a foreign vessel in a foreign port the right to sue in our courts for relief under the aforesaid Seaman's Act, in spite of the fact that he signed a contract abroad which denied him such rights.

The Jones Act was enacted in 1920 as an amendment to the Seaman's Act of 1915. As such, it partook of the broad coverage of the latter.

The reference to "any seaman" was a generic term and of wide application to those partaking in maritime activities, regardless of type of labor or nationality.

In *Uravic* v. *Jarka*, 282 U. S. 234, 51 S. Ct. 111 (1931), Mr. Justice Holmes considered the very question as to the categories of employment and the foreign flag of the vessel. To the argument that longshoremen were not specifically included and that courts previously refused to afford in rem relief to seamen on foreign vessels, he pointed out that the act *"is directed to extension, not restriction"* and framed the issue as follows:

> "But the question is not whether they were thought of for the purpose of inclusion, but whether they were intentionally excluded from a description that on its face includes them."

He went further and pointed out that there was no reason why the law should not have universal application, posed the question as to whether *"general words should not be generally applied"*, and added:

> "It is always the law of the United States that governs within the jurisdiction of the United States, even when for some special occasion this country adopts a foreign law as its own."

The only limitation that he placed on the area of the Jones Act is contained in the comment that:

> *"If* it should appear that, by valid contract or special circumstances, seamen on a foreign ship *should not* be protected by the statute, it will be time enough to consider the exception when it is presented." (Emphasis ours.)

There is small comfort indeed in this opinion of Judge Holmes for the limitation of the Jones Act to exclude a foreign seaman who was included by its general words "any seaman", in conformity with our public policy and national interest.

There are no "special circumstances" in this case calling for an exception to the coverage of the Jones Act.

On the contrary there are "pressing circumstances" demanding its full and complete application.

Nor is a valid contract presented, in keeping with our mores and our law, to justify the exception in good conscience.

It is respectfully submitted that the "Articles", petitioner's Exhibit "A" (p. 45) are contrary to our public policy and contravene our laws in that:

1. No new "Articles" are signed for each voyage. It was and is the practice of petitioner to add lists of names to the same "Articles" as seamen sign on and off the vessel throughout many voyages.

2. It was admitted that the "Articles" were indefinite (fols. 139, 145). Such indefiniteness was part of the plan to disguise and conceal the true scope of each advertised voyage from and to American ports.

3. It provided for a discharge of the seaman on seven days' notice at any port. The corresponding right to leave cannot atone for the danger inherent in permitting owners to strand seamen wherever they will to do so.

4. The "Articles", actually contemplating voyages within the orbit and in the service of the United States, provided for a limitation of the owner's liability, and

5. They concealed the names of the true owners and operators by failing to show that the voyage was a joint operation with the West Coast Line, Inc., and Wessel-Duval & Co., Inc., as reported by the Maritime Commission in 1940 A. M. C. 1515.

On the point of indefiniteness alone our courts should not recognize the validity of these "Articles".

In *The Quogue*, 261 Fed. 414, affirmed 266 Fed. 696, 4 Cir., 1920, Articles calling for a voyage from Baltimore

to any port, in the world, wherever the Master directs, and return to the United States, not exceeding six months, were vague and uncertain as to the voyage and the services contemplated. The law is so well settled that a further citation of cases is unnecessary.

And then if we add to this disability the seven-day discharge provision, the failure to have "Articles" for each voyage, the failure to name all the true owners and operators, and the attempt to limit liability, an act frowned upon and time and again rejected by this Court, all committed in a contract signed in the United States and covering a voyage from and to its ports, for the purpose of engaging in its commerce, it becomes imperative that our laws and our public policy should prevail.

As this Court held in *Garrett* v. *Moore McCormack*, 317 U. S. 239, 63 S. Ct. 246, while considering the validity of a release, a seaman "may not be technically incapable of signing a contract", yet, as wards of the court, any contract signed by them will be scrutinized closely and if any advantage to the shipowner is not compensated by extraordinary benefits it will be set aside as inequitable.

Here we have an inequitable contract and its provisions were properly interpreted for the benefit of the seaman, and the finding below that the Danish law was not binding on the respondent should not be disturbed.

In his "Law of Territorial Waters and Maritime Jurisdiction", supra, Philip C. Jessup pointed out that after the cancellation of consular conventions, in accordance with the expression of congressional will in the Seamen's Act of 1915, subsequent conventions were limited to:

1. A complete lack of jurisdiction by consuls in criminal matters (peace and tranquillity), except as permitted by local authorities, and

2. "Such officers shall also have jurisdiction over issues concerning adjustments of *wages* and the execution of *contracts* relating thereto, *providing local laws so permit.*" (Emphasis ours.)

Thus it is our express public policy, through a mandate of our Congress, that wages and contracts, necessarily including ship's articles, negotiated or executed here, should be governed by our laws.

Petitioner, and all other owners of foreign vessels, signing on seamen, regardless of nationality, in American ports, are required to comply with our policy, enactments and regulations.

This, petitioner failed to do. The articles, upon which he predicates his claim for immunity, clearly violate our standards, policies and laws in regard to such documents. They were, therefore, properly interpreted for the benefit of the seaman, and their self-serving exemptions from liability can have no weight in our courts.

If anything, these articles demonstrate the lengths to which owners will go, to disguise their identity, distort the scope of their voyages and drive the sharpest bargain to secure advantages in our ports denied to American shipowners.

It was neither the intention of Congress, nor the policy of our government, since its inception, to permit such rights. This is especially true of those like petitioner, who, in all but flag, are American, operating in American commerce.

The articles were and are void.

In *Arthur v. Compagnie Generale Transatlantique*, 1943, 5th C. C. A., 72 F. 2d 662, an action under the Jones Act against a foreign flag vessel and a plaintiff of unknown residence, the Court stated:

> "While the allegation as to residence is not sufficient to show citizenship of the plaintiff, the right of action is given to all seamen regardless of nationality."

And in *Kyriakos v. Goulandris*, 1945, 2d C. C. A., 151 F. 2d 132, Judge A. N. Hand wrote:

> "When Congress used the word 'seamen' in the Jones Act it employed a word of general application, embracing men of any nation who sail the seas. Had it wished

to limit the application of the statute to seamen of American citizenship or residence, the words to effectuate the limitation were at hand. The legislature did not see fit to use them."

Reason, justice, equality, under our laws, and our vital national interests demand that this Statute be applied as broadly and as generally as it was written, for the benefit of all seamen regardless of nationality or residence.

The constitutionality of the Jones Act was affirmed in *Panama Railroad* v. *Johnson,* 264 U. S. 375, 44 S. Ct. 391, 1924. This case also held that the reference in the Act to jurisdiction under the court of the district where defendant resides or maintains his principal office referred to venue.

In *Stewart* v. *Pacific Steam Navigation Co.,* 3 F. 2d 329 (1924), Judge Learned Hand ruled that foreign corporations were suable under this Act.

Uravic v. *Jarka,* supra, overruled the archaic view entertained by the Court of Appeals of the State of New York and enlarged the scope of the Jones Act to give relief to longshoremen injured on foreign vessels. The opinion of Mr. Justice Holmes, supra, also clearly indicated that the Jones Act should be generally applied to foreign as well as American seamen and owners.

Gerradin v. *United Fruit,* 51 F. 2d 417, cert. den. 302 U. S. 750, established the principle that American owners cannot avail themselves of the foreign flag shield.

In *"The Paula",* 91 F. 2d 1001, cert. den. 302 U. S. 750 (1937), a German seaman who signed on in Chile on one of petitioner's vessels for a voyage to the United States libeled the vessel and still sought relief under the Jones Act.

This case comes under the doctrine of *Plamals* v. *SS. Pinar Del Rio,* 277 U. S. 151, 48 S. Ct. 457 (1928), which held that the Jones Act did not authorize suits in rem.

Nevertheless, *"The Paula"* is cited as authority for the rule that a foreign seaman who signs on a foreign vessel in a foreign port is not covered by the Jones Act.

In doing so the commentators completely ignore the improper "in rem" proceedings and unfortunately they are not aware of two additional factors: first, all the facts were not before the Court since the true methods of operation of this petitioner were seemingly then unknown, and, secondly, the principle of public policy and the sovereign's paramount right to protect and preserve its own vital interests transcending its "peace and tranquility", were not presented for consideration.

Hence, this case is of doubtful value as a precedent, while its importance rests on the demonstration of the ease with which the "law of the flag" can shield operators and confuse issues.

In *O'Donnel* v. *Great Lakes Co.*, 318 U. S. 36, 63 S. Ct. 488, the jurisdiction of the Jones Act was disputed as to an injury incurred on land to a seaman serving on a vessel engaged on an intrastate voyage. While the facts are not the same, the shipowner there raised the same issue as does petitioner, claiming that the jurisdiction of a tort is governed by the place of injury under the Jones Act.

This Court rejected such theory and Mr. Chief Justice Stone probed the fundamentals of the Jones Act jurisdiction and pointed out that neither maritime rules nor our admiralty law had previously provided a remedy for negligence against an employer and that the Act was an enlargement of our substantive law and was not restrictive in its remedy, holding "that there is nothing in the legislative history of the Jones Act to indicate that its words 'in the course of his employment' do not mean what they say", and concluded that the Act applied whether the vessel engaged in interstate commerce or not, stating (p. 42):

> "The right or recovery in the Jones Act is given to *the seaman as such*, and as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends *not on the place where the injury is inflicted* but on the *nature of the service* and its relation to the operation of the vessel plying in navigable waters." (Emphasis ours.)

Gambera v. *Bergaty*, 132 F. 2d 414 (1943); cert. den. 319 U. S. 742, 63 S. Ct. 1030, afforded relief to a foreign seaman against a foreign owner on a voyage which began and ended in the United States.

Judge Learned Hand wrote the opinion, evidently granting relief on the basis of the fact that the voyage began and ended in the United States. Considering his comments on page "53" of his brief, petitioner approves of this decision.

However, since this was a foreign vessel, it is difficult to see how it could engage in a coast-wise voyage. The report is silent on this point. But obviously this must have been just one leg of a foreign voyage. This point is significant in relation to the discussion of the *Kyriakos* case that follows.

Kyriakos v. *Goulandris*, supra, gave relief under the Jones Act to a foreign seaman on a foreign vessel who signed on in New York for a voyage from and to the United States, and who was injured in an American port. This decision was based on the sweeping terms of the statute and the broadening and liberalizing of the rules governing the subject litigation.

It should be noted that the reported case indicates that *Kyriakos* sailed from Newport News and then the vessel came to Fernandino, Florida. The sequence of events indicates this to be so, rather than the voyage having proceeded to foreign ports before the injury. Therefore, it appears that *Kyriakos* was injured while on a voyage from one port in the United States to another.

This is similar to the factual situation inferred from the *Gambera* case. In both cases, it is reasonable to assume, the injury occurred while proceeding from American port to American port.

Unfortunately Judge Learned Hand neither distinguished nor mentioned the *Gambera* case in *Kyriakos*. The majority opinion did.

Certainly the fact, that Gambera signed on for a coast-wise voyage and *Kyriakos* for a foreign voyage, should not be pivotal.

It appears from a reading of the *Gambera* opinion by Judge Learned Hand, that the controlling factor was the nature and scope of the voyage, which was American.

But in *Kyriakos*, a voyage that starts in Newport News and then proceeds to Florida, or even if it had proceeded to a foreign port and then back to Florida, likewise creates a voyage, American in scope.

We cannot escape the clear expression of Judge Learned Hand's ruling in the *Gambera* case, that:

> "We see nothing in the definitory section § 713, Title 46, U. S. C. A., to limit the application of the Act to American ships or American citizens. As to ships *Uravic* v. *F. Jarka Co., supra,* was an express answer and thereafter the definition no longer offered an obstacle to including foreign seamen."

Despite Judge Learned Hand's *Kyriakos* dissent, we rely on his mention therein of the elements necessary to give our courts jurisdiction under the prevailing conditions.

First, we may note that his opening words were:

> "There is much temptation to affirm this decree * * * *"

What was it that prevented such affirmance on his part?

Implicitly, the *Kyriakos* dissent points out that the decision related to a very narrow area and did not afford the full relief called for by other factors that were involved and not presented to the Court.

It is upon the following phrases found in the dissent that we say, had the facts herein, and the arguments thereon, been presented to Judge Hand, his decision might well have been with the majority.

On page 159, in discussing whether or not the Jones Act attached to foreign vessels at sea or at a foreign port, he said:

> "At least nobody suggests that the Jones Act does so."

Did Judge Learned Hand intend to rule that seamen sailing on vessels of foreign registry but under American ownership, or American citizens signing on foreign vessels in our ports, who are injured in a foreign port or on the high seas, are not covered by the Act?

Obviously, the decision of the majority did find that it so applied, because in *Taylor* v. *Atlantic Maritime Co.*, 1950, 2d Cir., 179 F. 2d 597, cert. den. 341 U. S. 915, 71 S. Ct. 736, he himself ruled that the distinguishing elements in the *Kyriakos* case were not pivotal

> "and that the rationale of that opinion (Kyriakos) went further; that it construed the Jones Act as imposing its terms on all owners who sign on crew in an American port."

Thus the *Kyriakos* decision extended the Jones Act to the high seas and foreign ports based on the "signing on" element.

Judge Hand objected to the fact that this extension was not urged.

We urge it here.

On the same page he discussed the "law of the flag" favoring its application:

> "* * * * except for some pressing reason of domestic policy, to disregard it."

It is apparent that the prevailing conditions relating to the operation of foreign vessels in our ports were not presented to the Court for its consideration to determine whether our public policy is at stake.

Our case is predicated on this and the following point made by Judge Learned Hand, and we are urging it with every fact at our command.

He then goes on to say in the dissent:

> "* * * * There are occasions, of course, when *the state of the port has an overriding interest in insisting upon its own ideas;* but in the case at bar the question does not touch a breach of peace * * *." (Emphasis ours.)

In the words "overriding interest" and "pressing reason of public policy" he struck the core of the jurisdictional element, present in this case and, according to Judge Hand, absent in *Kyriakos*.

However, we disagree with his conclusion and point out that Judge Hand may have been carried away by the nostalgia for an old rule that has been honored as much in its breach as in its observance.

He did fail to balance the economy of the vessel with the economy of its host.

Note, please, his last clause in the above quotation. He states that there was no "breach of peace" in *Kyriakos*. Yet the facts clearly disclose that Kyriakos was assaulted ashore in an American port. Is that not a breach of peace?

And if our courts can take jurisdiction in criminal matters of no vital national import, is it not natural that the same power exists when an "overriding" national interest is at stake? Certainly it does not matter very greatly to us whether Kyriakos' assailant is tried and punished here rather than in Greece, if that were really the home of the vessel. In fact, conceding jurisdiction to the flag would save us the cost of trial and imprisonment.

As to the cases cited by Judge Learned Hand in the footnote of page 159, the rules formulated by them and the dicta therein are not quite applicable to the *Kyriakos* case or the facts herein. *"The Scotland"* and *"The Belganland"*, supra, are in support of our case, since they enunciate the doctrine of the primacy of the "law of the forum" over the "law of the flag". The dicta regarding seamen's wages and contracts has been superseded in *Strathearn* v. *Dillon* and *Patterson* v. *Bark Eudora*, supra. And Judge Swan in *"The Paula"*, supra, ruled that a personal injury claim does not arise out of the "internal economy of the vessel or its discipline".

Thus, despite all "regretful" arguments contrary to the majority in the *Kyriakos* case, Judge Learned Hand unerringly pointed to the essential conditions, underlying practically all of the litigation brought by foreign seamen

in our courts, which justified the assumption of jurisdiction by our courts in extending the broad application of the Jones Act to foreign seamen serving on foreign vessels regularly engaged in the transportation of our commerce, thereby affecting our overriding national interests and interfering with our established public policy.

In *Taylor* v. *Atlantic Maritime Co.*, supra, Judge Learned Hand ruled, in a case of a foreign seaman signing on a foreign vessel in the United States, that residence and place of injury were merely incidental and that the "rationale" of the *Kyriakos* case "construed the Jones Act as imposing its terms on all owners who sign on crews in the United States".

Nor does the Jones Act stand alone as a legislative mandate applying to foreign owners and seamen using our ports. The Harter, Limitation of Shipowner's Liability, High Seas Death, Stand-by, Passenger and other statutes equally subject, and accord privileges, to foreign citizens.

Thus it is clear that our Legislature and our courts have set the standards of the laws of the United States in the very areas which it is claimed the "law of the flag" must apply. The Jones Act is only one of the many such laws, regulations and doctrines so applied to foreign shipowners and seamen who use our ports.

If our laws are applicable to foreign shipowners when to their advantage, to foreign passengers, to commercial documents valid where drawn, reason and justice demand that they be applied for the benefit of the seamen who make possible the carriage of goods and passengers from and to the United States.

We must conclude that the ancient maritime rule did not abrogate the absolute power of the sovereign within its domain. The United States always possessed the unquestioned right to impose its laws upon all vessels entering its ports. Only a successful challenge by force, a self-imposed treaty limitation, or any abject surrender of national interest could limit such sovereign power.

While it may be very desira le to have a definite and certain body of laws and standards imposed upon the international community, it must be regretfully conceded that no world body has ever existed possessing the unchallenged power and wisdom to provide such uniformity and to enforce its application.

Here in the United States the enlightened policy of our legislatures and our courts have constantly liberalized and broadened the scope of remedial legislation for seamen, culminating in the Jones Act, and our courts have properly enlarged its benefits within its broad scope.

POINT III

The law of the forum, in whose commerce a foreign vessel engages, follows such vessel while so engaged and is equal in right and co-extensive with the law of the flag.

Respondent's position herein does not involve any new postulates, extensions of General Maritime Rules or our statutes, nor does it expand the jurisdictional orbit of the United States.

In the absence of a code of international law applying with equal force to all nations alike and an effective enforcement body, we must, of necessity, rely upon and apply the maritime laws accepted, enacted and developed by our legislatures and courts.

The general rule of the "law of the flag" is not rendered nugatory on the basis of the rulings requested herein.

Obviously, the high seas leave a vacuum that must be filled by an appropriate body of rules of which "the flag" is but one.

But there are exceptions and limitations to this rule:

b. Where the peace and tranquillity of the host nation is involved.

2. Where the domestic policy or overriding national interest is involved.

And to these two we add:

3. Where the "foreign flag" vessel or its sister ships of the owner are regularly engaged in carrying the commerce of another nation from and to and to and from its ports.

As to the first two exceptions, their validity and general acceptance cannot be doubted. To hold that a foreign flag vessel possessed complete immunity from the laws of the nations it visited and to whose jurisdiction it submitted itself would be folly. A host nation has the natural right to protect its own interests. To hold otherwise would be a negation of sovereignty.

Nor is the third exception a novel one.

It is commonly accepted and requires no argument that all those who do business within a jurisdiction affect its interests and become subject to its laws.

We must keep in mind that the flag rule when formulated did not contemplate the ocean-borne transportation business as it is now conducted.

Up to the middle of the nineteenth century merchantmen were what their name implies, traveling merchants and traders. Transportation for hire was not an accepted and common practice. In those days vessels were truly casual visitors to the ports of the world.

Today these trade routes have been converted to sea highways for the carriage of goods, not their trade. Such routes have been highly organized. Shipowners, responsible for the bulk of such transportation, have divided such routes into independent ventures. Vessels would be assigned, for example, between the Mediterranean and Far Eastern ports, North Atlantic and African ports, American and South American ports, ad infinitum, without any of these vessels carrying the commerce of the owner's country or the ship's flag.

Because of the situation above, it would be neither practical nor right to inquire only into the scope of the particular voyage on which a vessel was engaged whenever a cause of action arises. It may very well be that a common owner may have temporarily diverted one vessel from one of its trade routes to another. Or else he may have chartered a vessel to meet a pressing engagement. Under those circumstances, this vessel may truly be a casual visitor to the nation whose interests are involved. But actually such vessel would be engaged in the regular business of the owner or operator. Or else such sailing may be the maiden voyage on the particular route.

Therefore, in determining the scope of a vessel's voyage, the prior activities of the owner or operator in the regular commerce of the affected nation should be determinative of the scope of what may appear to be a casual call of a vessel temporarily assigned to such a trade route.

At one time the ship's flag and the owner owed a common loyalty to one sovereign.

Today, with intricate corporate relationships, one owner may have several corporate alter egos, each of different nationalities, and each of these instrumentalities would own and operate or operate vessels flying the flags of still other foreign nations.

The vessel's flag is no longer a true indication of its ownership, operation or allegiance, and, aside from the benefits from registration fees, the country of the flag may have no interest in the vessel's affairs.

Therefore, the original purpose behind the application of this rule, the overriding and exclusive interest of the sovereign in the vessels engaging in his commerce, no longer has a basis in fact, with few exceptions, and lacks moral justification under modern ocean transportation conditions.

Vessels no longer have a primary effect solely upon the country of their flag, with a mere casual and incidental effect upon the countries whose ports they visit. On the contrary, they have at least as great an effect if not

greater, upon their hosts. This is true even where the flag and ownership is the same. Such vessels, of necessity, affect other countries whose commerce they carry and with whose merchant marine they compete. Therefore there is neither right nor reason to apply the law of the flag in derogation of the interests of the host nations.

Any nation wherein a foreign flag vessel conducts a substantial part of its business has a right to impose its laws upon the stranger who competes with its citizens.

This is implicit in the right of each nation to assume jurisdiction and apply its laws where its domestic policy and overriding interests are involved.

Thus we can say that if a vessel or vessels regularly carry goods from and to and to and from the ports of a particular nation and thereby participate in the ocean transportation business of that nation, competing with its nationals, such vessels, pro hoc vice, assume the national identity of this host nation for the purpose of liability under its laws and such laws should follow the vessel wherever it goes while engaging in a voyage carrying the commerce of that nation.

It is the scope of the voyage which should determine the liability of the vessel and its owner. If engaged in the carriage of American commerce, both are subject to the jurisdiction and laws of the United States.

It is no more than just and reasonable that where we have two spheres of influences, affecting two separate national entities, the laws of each shall be applied to the sphere of each, and neither nation should have the right to impose its laws within the sphere of the other.

The "law of the flag" under this rule still prevails with all its majestic serenity in the proper area for its expression, within its own jurisdiction.

But it cannot and should not prevail in the jurisdiction of dominant or equal interest where it conflicts with public policy and overriding national interest.

True, there is an apparent conflict.

But such conflict is inherent in international trade and is common to all men of all lands who do business subject to the laws of other countries.

It is not for this Court or the court of any nation to commit economic and political suicide by acceding to laws and policies of other states.

After all, when the Ford Company engages in the automobile manufacturing business in Great Britain, Germany, Canada and other countries, it is subject to the laws of those countries and not of the United States.

The fact that those foreign laws may have an impact on our economy, by way of expropriation or otherwise, does not entitle the United States to claim that its laws should prevail within a foreign jurisdiction.

Nor does the fact that such foreign operation of plants may injure our export trade of cars and cause unemployment to our labor, justify the application of our laws in such foreign countries to control the activities of our nationals in the latter's economy.

By the same token, petitioner's Government should likewise be limited in its right to impose its laws upon its nationals doing business here.

There is no real distinction between doing business on land and on the sea. The extension of the interest of the United States over the "no-man's land" of the sea lanes carrying its commerce is as substantially real as its jurisdiction over the rails, highways and waterways within its boundaries. And that holds true for any nation. This is a necessary adjunct to the doctrine of the "Freedom of the Seas". Otherwise our affairs would be governed by foreign laws in derogation of our rights in our commerce on the seas.

It is not a valid argument, in opposition to the premise advanced herein, to say that such rule places a burden on the owner to know and be subjected to the laws of those nations wherein and for whom he conducts a regular business in the carriage of their commerce.

After all, an exporter and importer, regardless of his nationality, is required to know the contract and commercial laws of each nation with which he does business. In addition, he is responsible for the multifarious tax, trade, customs and port regulations, which change with rapid regularity. Every business man, whose interests are extensive, is subject to the laws of every nation wherein he does business.

A shipowner is not entitled to an exempt and preferential treatment on that score. The various laws and regulations are known to him. It is all part of his cost of doing business.

Nor is it a valid objection to hold that a shipowner may be liable for different amounts, under different theories, in several jurisdictions, because of one event or disaster.

A new liability is not being posed by this rule.

In the case of loss by collision, or other disaster, owners are subject to many suits under the laws of more than one country. As Mr. Justice Holmes held in *The Titanic,* supra, such several differing liabilities in several different jurisdictions is no bar to a suit in any nation holding concurrent jurisdiction and is no reason for the application of the law of the flag. It is the burden and expense of doing business in more than one land and falls equally upon the citizens of all nations so engaged.

So, too, in the case of the seamen who serve on such vessels. They may very well have the election to sue under the laws of two or more jurisdictions, depending on which is more favorable. To say that is unjust, because of mere fortuitous circumstances, is as absurd as to say that it is unjust that a man was born a Dane and had to content himself with the lower wage scale of that country, whereas if he had been born an American, his wage scale would have been higher. Fortuitous circumstances are the portion of every man and can no more be avoided than the elements.

Such election of rights and remedies is not reprehensible and is duplicated in many branches of the law in all com-

tries. As this Court ruled in *Panama R. R.* v. *Johnson*, supra:

> "There are many instances in the law where a person entitled to sue may choose between alternative measures of redress and modes of enforcement; and this has been true since before the constitution. But it never has been held, nor thought, so far as we are advised, that to permit such a choice between alternatives otherwise admissible is a violation of due process of law. In the nature of things, the right to choose cannot be accorded to both parties, and, if accorded to either, should rest with the one seeking redress rather than the one from whom redress is sought."

As to the fact that under this rule American seamen would have similar rights of election, all we can say is, that it would be a consummation devoutly to be wished for, to reach the period when the standards of other nations will meet or exceed ours. We assume that there would be more favorable legislation elsewhere, otherwise the right of election would be meaningless. In fact, the policy of our Government and a substantial part of our wealth is being devoted to that end.

At least our merchant marine would be spared the unfair competition and penalties it now suffers by reason of the discrimination in foreign ports. We stress equality and not discrimination or undue advantage. By all means let our seamen have such an election. Their rights are broadened, not restricted, thereby.

In the final analysis, and reduced to its simplest element, the issue herein hinges on whether or not a sovereign power has the right to exercise its jurisdiction and apply its laws to all who do business within its stream of commerce, citizen and alien alike.

Even though we are to assume that the Jones Act applied only to American vessels and seamen, and judicial opinion is to the contrary, nevertheless, our Courts have the inherent power to apply it to foreign vessels who partake

of and take on the characteristics of American vessels in the carriage of our sea-borne commerce. The Courts can pierce whatever veil, shroud or pretense that may be interposed and say, in this instance, you are an American vessel, affecting vital American interests, and you are subject to the same liabilities that apply to our own vessels.

POINT IV

Petitioner rests his entire case on a major premise based on incorrect assumptions of fact and therefore his arguments are neither appropriate nor valid and his cases are not in point.

The question presented by the petitioner presupposes the existence of a state of facts concerned exclusively with an "all foreign" problem, with no major point of contact with, concern to, or impact upon the United States.

He cannot escape the public records and open publication of his activities, over these many years, attesting to the place he occupies in the American Shipping Industry and participation in the carriage of America's commerce from and to the United States. The fact is that the record below did not require such proof under the law then prevailing in the Second Circuit. The respondent should not be penalized for adherence to such prevailing rule. Further proof on petitioner's position in American commerce is unnecessary. The public record, together with the record herein, remove every doubt on that score. The substantial question of public interest affecting our merchant marine, seamen and maritime welfare, as well as respondent's rights, requires that petitioner should not escape the consequences of his acts.

The issue, rather, turns on whether this Court has the power and consequent duty to apply American law equally to citizens and aliens who engage in the business of this

country and affect its domestic policy and overriding national interest pertaining to its economic welfare and social philosophy.

Point I of petitioner's brief is likewise fallacious. It sets forth only a part of the elements under consideration. It fails to include, as in the case of the major premise, the factor of business performance in, and effect upon, the United States.

Furthermore, its conclusion does not conform to the fact that in *Uravic* v. *Jarka, Arthur* v. *Compagnie Generale Transatlantic, Gambera* v. *Bergotty, Kyriakos* v. *Gouladris* and *Taylor* v. *Atlantic Maritime,* supra, all contain clear judicial confirmation that the Jones Act does apply to foreign vessels and foreign seamen under appropriate conditions.

It is doubtful if petitioner will press his second point requesting the "Lex Locus Delicti" to apply. He does not urge the law of Cuba.

In maritime torts, as stated by Mr. Justice Stone in *O'Donnell* v. *Great Lakes,* supra, jurisdiction

> "* * * depends *not on the place where the injury is inflicted* but on the nature of the service and its relation to the operation of the vessel plying in navigable waters." (Emphasis ours.)

Petitioner's limitation of the "Law of the Flag" only to matters affecting the internal economy of the vessel, likewise excludes essential existing factors from consideration.

Furthermore, in *"The Paula"*, supra, Judge Swan ruled that a maritime tort does not arise out of, or affect the internal economy or discipline of the vessel.

Under present day conduct of the business of ocean-borne transporation, vessels are not exclusively engaged in the commerce of their flags. On the contrary, in a very large and probably disproportionate percentage of instances, vessels are engaged in the commerce of and service to other foreign nations rather than those of their flags. Even where it serves the commerce of its flag, it is simultaneously

serving the interests of other nations. Under those circumstances, the imposition of the law of the flag upon nations having an overriding interest in such maritime activities is unjust.

In the absence of a unified and universal maritime law applied equally to all nations, the scope of the voyage of vessels should determine the appropriate jurisdiction and the applicable law. The public policy and interest of affected nations should not be nullified by the law of the vessel's flag.

The pivotal facts in *Kyriakos* v. *Goulandris* and *Taylor* v. *Atlantic Maritime Co.* are found in this case. The signing on in the United States, the voyage from and to the United States, petitioner's open and notorious engagement in American commerce and the act of negligence, more than meet the legal requirements for jurisdiction and liability as set forth in the cited cases.

In the main, plaintiff-respondent's arguments in the preceding points of this brief, amply rebut those offered by petitioner. There are, however, a number of significant statements in petitioner's brief that are rather illuminating.

For example, on page "23" of his brief, and in other places, petitioner stresses the fact that jurisdiction over foreign shipowners was not intended in the Jones Act, because the action must be brought where the owner resides or has his office. "What foreign shipowner can be found in the United States?" asks the petitioner. He then airily dismisses the importance of the Jones Act as relief for foreign seamen because there are only "isolated" instances where owners can be found here.

If that were so, and the liability to foreign owners was so minimal, why does petitioner put forth such efforts to nullify so ineffectual a statute? Why did four foreign Governments intervene and claim that they were interested in the outcome of this appeal?

Petitioner also sheds tears for the injured Danish seamen who may never return to the United States and thus lose his rights. We thought that that was the end sought by

him. He also commiserates with the grief of the Danish shipmate who cannot avail himself of our rights and remedies. Both situations, if petitioner and his intervening Government are sincere in this protestation, can be cured by remedial Danish legislation. By their own implicit admission, Danish seamen prefer our laws to their own.

The records of our District and Appellate Courts belie the bland assumption that foreign owners cannot be subjected to our jurisdiction.

The case for congressional intention to afford immunity from the Act to foreign shipowners and elimination of its benefits for foreign seamen must be very weak indeed to require so weak and so incorrect an argument.

The indirect subsidy argument, on pages "24" and "25" of petitioner's brief is somewhat obscure.

How will equalizing the liability burdens of foreign and domestic shipowners place a cost burden upon the American taxpayer or his Government?

On the contrary, acceptance of petitioner's thesis would place a direct and costly burden upon American shipowners by way of higher costs than that of the foreign owners, with a consequent business loss to the domestic owner, a tax loss to our Government, a wage loss to our seamen and a deterioration of our merchant marine, so essential to our defense in these days of stress.

And who would benefit thereby?

The foreign shipowner, of course!

And is that not an indirect subsidy?

Whose foot does this indirect subsidy shoe fit?

Whose subterfuge is this?

As we stated before, and will repeat again and again, the rule proposed by plaintiff-respondent is not discriminatory; it merely calls for parity and equality under the law of the land where citizen and alien alike, do business.

We agree heartily that conventions and treaties, and we add recognized and enforceable rules of International Law, would be the ideal way to achieve uniform laws and uniformly high standards.

As petitioner points out on page "25" of his brief, that is the policy of the United States.

But he is woefully silent on the policies of the foreign Governments toward accomplishing this end.

No matter what adopted convention we may consider, it is well known that the standards of American laws and regulations are higher.

Why is it that we have so few conventions in that connection and why is it so difficult to secure international acquiescence and ratification of superior standards?

Certainly our policies and our efforts, as petitioner admits, are not at fault.

And does petitioner propose that until all foreign nations, acting in their own national interests, accede to such conventions, we must abide by and submit to the unilateral desires of those nations in giving effect to their laws within our commerce, to the detriment of our economic welfare and defense needs?

What petitioner is proposing is an abdication of sovereignty and a direction to this Court to consider the higher insurance costs of foreign owners paramount to the duty of fairly and equally applying our law to all who submit themselves to its jurisdiction and do business in the United States stream of commerce.

Many of the cases cited by petitioner are completely foreign to the issue herein and all are subjected to a strained application to facts as he would like them to be and not as they are.

In *New York Central R. R. Co.* v. *Chisholm*, 268 U. S. 29, 45 S. Ct. 402 (1925), an American railroad worker, injured while his train was in Canada, sued under the Federal Employer's Liability Act and recovery was denied.

The precise point at issue was the absence of any express authority in the F. E. L. A. for extraterritorial jurisdiction or circumstances inferring such purpose.

Both elements are present in the Jones Act.

As Mr. Justice Stone pointed out in *O'Donnel* v. *Great Lakes Co.*, supra, the circumstances of a seaman's services

necessitated the extension of the act to include injuries on the high seas or in domestic and foreign ports. It is also implicit in the very words of the act "in the course of his employment", that the nature of the services and not the place of injury should govern. Thus the fallacious inference drawn from the *Chisholm* case has no application herein.

It is significant that in *Grand Trunk Ry. Co.* v. *Wright*, 21 F. 2d 814 (6 Cir.) (1927), affirmed 278 U. S. 577, 59 S. Ct. 176, also cited by petitioner, the Circuit Court of Appeals emphatically rejected the applicability of the *Chisholm* rule to a maritime cause.

It also rejected the "Law of the Flag" rule for the same reasons as respondent does herein.

In that case a Canadian ferryman, a Canadian railroad, a Canadian contract of employment, services performed mainly in Canada, with only a casual and incidental call at Detroit, and an American ship flying the American flag but chartered to the Canadian railroad, and a suit under the Federal Employers' Liability Act were involved.

The Court emphasized the casual connection between the employee's services and the United States. It pointed out that the mere crossing of the imaginary dividing line in lake waters is insufficient to invoke the Rule of the Flag. How such rule could be applied in a Federal Employers' Liability Act case was not explained. The Court held that here the scope of the voyage and the employment was essentially Canadian and neither the flag of the vessel nor the place of injury could serve as jurisdictional elements.

However, this Court in affirming did not consider these elements, but decided the matter on the basis of *Union Pacific R. R.* v. *Wyler*, 158 U. S. 285, which ruled that an amendment, which departed from the pleadings, could not be made after a statute of limitations had expired.

If anything, this case supports respondent's claim that Chisholm is not applicable and that the effect and scope of a voyage should determine maritime jurisdiction rather

than the law of the flag. It also negates the "Lex Loci Delicti" argument.

Jamison v. *Encarnacion*, 281 U. S. 635, 50 S. Ct. 440 (1930), offers no conflict in facts or law with the issues in the subject application.

A stevedore who was assaulted by his foremen received benefits under the Jones Act, thereby enlarging its scope.

Petitioner makes no greater claim for this case than it affirmed the necessity of establishing negligence under the Jones Act.

Since the record in the subject matter discloses proof, charge and findings of negligence, no disharmony can be found between the two cases.

Cortes v. *Baltimore Insular Line*, 287 U. S. 367, 53 S. Ct. 173 (1932), petitioner argues, holds that some element of negligence must occur in the United States to secure jurisdiction under the Jones Act. That is not correct.

The facts in the *Cortes* case concern an American seaman in American waters, and how petitioner arrived at this unique conclusion escapes us. It is contrary to the express ruling of this Court in *O'Donnel* v. *Great Lakes Co.*, supra, which held that the nature of the service, and not the place of injury, governed.

In *Plamals* v. *S. S. Pinar Del Rio*, 277 U. S. 151, 48 S. Ct. 151 (1928), an injured foreign seaman, who had signed on in a foreign port, libeled the vessel.

The Court held that the Jones Act contains no authority to secure jurisdiction by way of a libel.

Naturally, the applicability of the Jones Act was not at issue and was not ruled upon.

In *Sonnessa* v. *Panama Transport Co.*, 298 N. Y. 262, cert. den. 337 U. S. 919, the record in the State Court indicates that the applicability of the Jones Act was not questioned by the defendant owner. Although flying a Panamanian flag, it was a subsidiary of the Standard Oil Company of New Jersey and was definitely liable at least under the doctrine of *Gerradin* v. *United Fruit*, supra.

For some unaccountable reason, the State Court, although the point was not at issue, ruled that it would not give effect to the Jones Act. Such limitation, by a State Court, of its own interests, does not concern this Court and certiorari was properly denied. This obvious divergence is of local concern and is of no import herein.

It is noteworthy that in *Resigno* v. *Jarka* (1928), 248 N. Y. 225, the New York Court of Appeals refused to give relief to another of its citizens, a longshoreman. (No application for certiorari.)

In *Uravic* v. *Jarka*, supra, on the same facts, the New York Court again refused relief to its citizens.

But this time this Court granted certiorari and unanimously reversed the State Court.

Nevertheless, in the *Sonneson* opinion (p 36, pet. brief) Judge Desmond cites the *Resigno* case as authority for the decision, totally ignoring this Court's reversal of the *Resigno* State doctrine in the *Uravic* case.

Furthermore, it is axiomatic that in matters partaking of Admiralty Jurisdiction, the Federal Courts do not follow the State Courts, but the contrary is true.

O'Neill v. *Cunard White Star Ltd.*, 160 F. 2d 246, concerns a foreign seaman aboard a foreign vessel with articles signed in a foreign port. The element of signing on in the United States is missing. However, the issue of the scope of the voyage and its relationship to American commerce should be the determining factor of jurisdiction. It evidently was not presented to the Court and no ruling on such issue was considered or made.

Wildenhus' case, 120 U. S. 1, and *U. S.* v. *Rodgers*, 150 U. S. 249, cover criminal matters. The correct exercise of police powers cannot be interpreted to represent a limitation of jurisdiction only to those instances where peace and tranquillity is involved.

In *Thompson Towing and Wrecking Association* v. *McGregor*, 207 F. 209, 6 Cir., 1913, a Michigan seaman, serving on a vessel of Michigan registry, recovered for an injury

in Canadian waters, in an action antedating the Jones Act. Here, too, petitioner's lex loci delicti argument is nullified. The decision is in harmony with the Jones Act and the Death on the High Seas Act. There is no conflict.

Slater v. *Mexican National R. R. Co.*, 194 U. S. 120, 24 S. Ct. 581 (1903), has no bearing on the issue. It concerns the common law rule of "Lex Locus Delicti" and is not applicable to maritime affairs. It merits no consideration on the issues herein.

American Banana Co. v. *United Fruit Co.*, 213 U. S. 347, 29 S. Ct. 511 (1909), has as little bearing as the *Slater* case. How an action for conspiracy can be applied to one in admiralty puzzles us.

If petitioner seriously accepts the doctrines of these and several other cases, as determining the rule herein, he should urge the jurisdiction and application of the laws of Cuba in this case. In comparing them with this case he is performing the rare intellectual treat of riding two horses in opposite directions at the same time.

The citation of *The Paula*, supra, is an excellent illustration of the factual situation which is crying for relief. The same petitioner and his counsel, as herein, were involved.

The District and the Circuit Courts were confronted by a case involving a German national, as libelant, proceeding in rem and in personam by way of a writ of foreign attachment, suing an admittedly Danish owner, whose vessel flew the Danish flag. The seaman had signed on in Chile for a voyage to New York.

There was no claim or proof that J. Lauritzen was not a bona fide foreign shipowner with no ties in the United States. The in rem nature of the proceedings lent color and truth to this apparent design.

Why *Flamals* v. *S. S. Pinar Del Rio*, supra, was not applied to the in rem action we do not know.

Naturally, there was no basis for considering the scope of the voyage as embracing an American activity within its commerce orbit, as is the situation herein, nor was such suggestion made or inferred.

But, at that time, Wessel Duval & Co. was operating this Danish vessel in the same ocean-borne United States commerce as is now being conducted in the name of its associated company.

This petitioner now comes to this Court and points to this case as authority for his immunity to the laws of the United States, not in spite of his activities, but on the basis of his implied denial of their existence (p. 65, pet. brief).

He assumes that because the Courts had previously ruled on his activity without having all the facts before them, that this Court will perpetuate the error.

Petitioner then proceeds to cite a portion of the prevailing opinion in *Kyriakos* v. *Goulandris*, supra (p. 138, pet. brief), for the proposition that the law of the flag applies. However, the citation specifically states that it "is true in the absence of any statute". Here we have the Jones Act, the statutory exception, and the further exception of "domestic policy" and "overriding interests of the sovereign" referred to in the dissenting opinion. It is also pertinent to note that Judge Augustus N. Hand immediately followed this excerpt with substantial valid reasons for its application.

As to the quotations in the petitioner's brief from the dissenting opinion, we refer to our consideration of the dissent in our Point III, supra, wherein we point out that it does not invalidate, but rather supports our position.

We also call special attention in the dissent to the words (p. 139):

"* * * accident of the port of call * * *."

Certainly, in this case, the calls at the Port of New York and other United States ports were not "accidents". They were regular recurrent acts of long standing. Judge Learned Hand's opinion was based on a given set of facts in which regularity of call was absent. We have no right to conjecture what his opinion would be on the facts herein. The same holds true for his opinion in the *Taylor* case.

The entire argument of petitioner is predicated on a complete disregard of the facts herein and the prevailing national situation. The prevailing conditions require that petitioner and all who partake of the American economy should be subject to our laws when our public policy or national interest is involved.

CONCLUSION

Your plaintiff-respondent, in offering his argument in support of the view that the Jones Act applies in a situation such as he found himself, has not strongly stressed the importance of the affirmance of the decision below to him and to many thousands of other foreign seamen who serve out of American ports in the carriage of the commerce of the United States. He has done so, not because he fails to realize and appreciate the benefits of the equal application of the laws of this country, but rather he has done so because of the substantially greater interest that is at stake for the American merchant marine, its seamen and the public welfare of the United States.

The real point at issue is not the intent of Congress in passing this Act, but the power of this great country, acting through its judicial arm, to protect itself against foreign vessels that, by indirection and misapplication of a rule not finding international acceptance, assume all the benefits and prerogatives of American vessels while at the same time callously avoid the disabilities and liabilities which should attend the assumption of such benefits under our flag.

Respectfully submitted,

RICHARD M. CANTOR,
Counsel for Plaintiff-Respondent.

GEORGE HALPERN,
of Counsel.

APPENDIX "A"

"CHART DISTRIBUTED BY THE NEW YORK CUSTOMS HOUSE"

JULY 1, 1951—JUNE 30, 1952

ENTRANCES			CLEARANCES		
Flag	*No. of Vessels*	*Net Tonnage*	*Flag*	*No. of Vessels*	*Net Tonnage*
Argentina	73	349,549	Argentina	73	340,779
Belgium	57	248,798	Belgium	57	250,801
Brazil	61	192,627	Brazil	59	187,881
Canada	244	395,547	Canada	246	395,975
Chile	27	131,185	Chile	27	131,185
Chinese	1	4,561	Chinese	1	4,561
Columbia	46	89,442	Columbia	46	89,442
Costa Rica	2	8,680	Costa Rica	3	8,715
Cuba	54	103,532	Cuba	54	103,532
Denmark	297	812,230	Denmark	295	801,440
Ecuador	15	31,648	Ecuador	14	29,542
Egypt	14	68,084	Egypt	14	68,066
Finland	42	77,865	Finland	42	78,566
France	140	1,171,846	France	142	1,182,108
Germany	101	233,998	Germany	99	227,943
Great Britain	855	6,261,949	Great Britain	863	6,291,386
Greece	52	263,944	Greece	52	263,935
Honduras	112	270,945	Honduras	110	267,508
Iceland	31	48,821	Iceland	30	46,174
India	8	35,668	India	8	35,668
Ireland	22	39,059	Ireland	22	39,058
Israel	26	108,908	Israel	24	99,738
Italy	116	745,737	Italy	112	738,308

ENTRANCES

Flag	*No. of Vessels*	*Net Tonnage*
Japan	72	310,291
Liberia	146	1,255,362
Netherlands	357	1,764,058
Nicaragua	1	1,001
Norway	1059	3,216,060
Panama	364	2,214,453
Philippines	16	68,407
Portugal	33	51,975
Spain	62	211,473
Sweden	267	631,910
Switzerland	7	17,905
Turkey	1	56
Union of South Africa	6	27,833
Venezuela	48	115,046
Yugoslavia	31	114,371
Foreign	4866	21,694,804
American	3525	16,620,261
TOTAL	8391	38,315,065
Undocumented Vessels	2	6
GRAND TOTAL	8393	38,315,071

CLEARANCES

Flag	*No. of Vessels*	*Net Tonnage*
Japan	71	305,955
Liberia	149	1,249,371
Netherlands	356	1,753,060
Nicaragua	1	1,001
Norway	1063	3,220,040
Panama	364	2,209,582
Philippines	16	68,407
Portugal	32	50,800
Spain	65	217,383
Sweden	260	621,728
Switzerland	6	16,868
Turkey	1	66
Union of South Africa	7	32,469
Venezuela	50	121,225
Yugoslavia	30	160,987
Foreign	4864	21,661,193
American	3420	15,358,767
TOTAL	8284	37,019,960
American Vessels in Non-Contiguous Trade	68	292,533
Undocumented Vessels	2	458
Reported Only	37	155,529
GRAND TOTAL	8391	37,468,480

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Supreme Court of the United States

October Term, 1952

No. 226

J. LAURITZEN,
Petitioner,

against

EVALD JOHANN LARSEN,
Plaintiff-Respondent.

BRIEF OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, *AMICUS CURIAE,* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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No. 226

J. LAURITZEN,
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BRIEF OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, *AMICUS CURIAE,* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Statement

This brief is filed by The Government of the United Kingdom of Great Britain and Northern Ireland as *amicus curiae,* because the legal principles and practical consequences involved in this case are of paramount importance to all maritime nations, including the United Kingdom.

Confusion and conflict in the interpretation of the jurisdictional scope and Congressional intent of the Jones Act are apparent in the decisions of various courts. Such confusion and conflict can be resolved by this Honorable Court. In view of the analysis and discussion of these decisions in the briefs of the Petitioner for Writ of Certiorari, and

of Plaintiff-Respondent, it would be repetitious to analyze and discuss these decisions in this brief.

But it does seem both appropriate and of the highest importance to point out to this Honorable Court the necessity of determining the scope of the Jones Act, of establishing reasonable principles for the guidance of the lower courts in their exercise of discretion in disputes between foreign seamen and foreign shipowners, and of the obvious or probable consequences of the decision of the Court of Appeals in this case in the absence of a definite determination by this Court of the questions involved.

Moreover, the decision of the Court of Appeals may well result in grave inequities and serious impediment to the free flow of international commerce, which can be avoided by a definitive decision of this Court.

POINT I

The principles of law established by the instant case are of extreme importance to all maritime countries, including the United Kingdom.

Just as in this country the obligations of an American shipowner to his seamen are clearly defined in statutory law, supplementing the general international common law, so too are the obligations of foreign shipowners to their seamen defined in the codified laws and judicial decisions of the country of the vessel's flag. If the decision of the Court of Appeals in the instant case is to stand as the correct enunciation of a principle of American Law, one foreign seaman signing on a vessel of his own country's flag in an American port and injured in foreign waters would have substantive rights and a measure of recovery quite different and, generally speaking, a quantum of recovery much in excess of other seamen serving on the same vessel under the same articles who had signed on the vessel at other than an American port. It should be

apparent that two foreign seamen signing articles drawn in accordance with the law of their nationality serving on the same vessel of their nation's flag should be equally compensated for the same injury and their recompense measured in accordance with the social standards of the country of their citizenship. It should also be apparent that the verdict of a New York City jury assessing the damages of an injured Japanese seaman might well exceed the award of a Japanese court by 10 to 1. Obviously, one Japanese seaman who had fortuitously signed on a vessel of his country's flag in an American port should not be given this great advantage over a fellow Japanese seaman, performing the same services and suffering the same injury, who had signed articles in Osaka. Stated conversely, if the purpose of the Jones Act is to place all seamen who have ever stepped on American soil in the same category as American seamen, would not equity require that this country open its courts to seamen of any nationality, no matter what the flag of their ship, the place of their injury or the purely fortuitous circumstance of the port of their signing on. The future effectiveness of articles signed by a foreign seaman on a foreign ship, even *when the injury occurs outside the United States*, may well be in question, because of such fortuitous circumstance, if this case is not finally determined.

From the standpoint of the shipowner, similar inequities would exist since he is taxed by his government to the extent necessary to support his country's social programs. He is obliged by his government in many instances, in one form or another, to contribute to compensation funds and the maintenance of other institutions established for the welfare of the country's seamen. To superimpose an additional liability not contemplated by the laws of his country, nor his contract with seamen serving on his vessels, would in effect constitute an attempt to legislate for people not having a voice in the legislative body.

Shipowners of every nation should not be apprehensive of incurring a double liability when they sign on seamen at

any port in the world. If the decision of the Court of Appeals should be affirmed, the long established pattern of recruitment now existing among maritime nations would be disrupted with very unfortunate consequences in the practical conduct of international commerce. For example, foreign shipowners would probably be compelled to sign on seamen entirely outside of the ports of the United States. It is hardly necessary to point out to the Court that in the event of an epidemic on board ship, this would place the shipowner in an almost impossible dilemma. Moreover, if some other emergency, such as the delivery of strategic materials to various parts of the world should depend upon the recruitment of seamen in an American port, the shipowner would also be seriously embarrassed.

This Court will not be oblivious to the fact that from the standpoint of the national economy of each maritime country, the potential of shipowners' liability and requirements for United States dollars for the satisfaction of judgments obtained in the United States could constitute a serious drain at a time when most of the maritime countries of the world are in the process of readjusting their economy and carefully supervising the expenditures of limited dollar funds.

Involved in this case are questions, the answers to which will have far reaching consequences to individuals, commercial interests, and the comity and cooperation among all maritme nations, including the United Kingdom and the United States. Such comity and cooperation are important at all times and are supremely vital in these times.

POINT II

The doctrine of the Court of Appeals' decision permits a double recovery by seamen in certain instances and results in inequities.

In the instant case the seaman has already enjoyed most of the benefits allowed under the laws of his own and the ship's country. Apparently, upon learning that broader benefits are obtainable under the American standard, he is here seeking a second recovery from his former employer. It does not seem to have been the statutory intent of the Jones Act to grant to foreign seamen a double remedy under the circumstances of this case. But that is a question which should be determined by this Court.

Moreover, the interesting question is raised whether to permit a foreign seaman to enjoy the benefits of his own country's laws and then to shop elsewhere for preferred and additional treatment is not only unjust to the foreign shipowner but is also inequitable to American seamen. If the principle of the Court of Appeals is adopted, it would seem that American seamen might well be limited to recovery of benefits established under American law while foreign seamen are permitted the benefits of their own law in addition to the benefits under American law.

We respectfully call to the attention of this Court that although the Court of Appeals in the *Kyriakos* case did not mention an important equitable consideration supporting the exercise of jurisdiction under its peculiar facts and circumstances, the District Court (*Kyriakos* v. *Polemis*, 53 F. Sup. 715, 716) did so, in saying:

> "Under the special circumstances existing, because of the war conditions and the probability that in no other place can this libellant obtain relief, if he is entitled to any, the motion (to dismiss the libel) is denied."

POINT III

This case raises the question whether there should be a marked departure from the historical doctrine that matters involving the internal economy of a vessel are to be determined in accordance with the law of the vessel's flag.

Each individual maritime country, based upon its own economic system, state of social advancement, standard of living and the will of its citizens, has the right to enact legislation setting forth the rights and obligations of its shipowners and its seamen. Attempts by any other country, by legislation or judicial action, to write laws governing the obligations and liabilities of a foreign shipowner to its seamen is a departure from the law of the flag so serious as to warrant this Court's consideration. Although social legislation, and in particular legislation concerning benefits due to seamen injured in the service of their vessel, differs in individual countries, this fact does not give another country the right to impose its standards upon foreign shipowners in their relations with citizens of the country of the vessel's flag. To hold otherwise would almost destroy the historical and prevailing doctrine that questions concerning the internal economy and discipline of a vessel are to be determined by the law of the vessel's flag.

Incidents occurring aboard a vessel which do not affect the internal welfare or breach the peace of the port, at which the vessel is temporarily located, have historically been settled in accordance with the law of the vessel's flag. Hypothetically, it is inquired: If the mere fact that a foreign seaman has signed on a foreign vessel in an American port gives the American courts the right to apply American law, what is to prevent Cuba from maintaining, judicially or conceivably by legislation, that its law applies since Havana is the place where the injury complained of occurred.

The Court's attention is respectfully called to the dissenting opinion of Circuit Judge Learned Hand in *Kyriakos* v. *Goudandris*, 151 F. 2d 132, 139 wherein that noted jurist, after pointing out the internal economy and discipline doctrine, states:

> "We should demand the clearest warrant before we substitute the Jones Act—primarily at any rate a local statute—for the pertinent law of [the country of the vessel's flag]".

He also stated, p. 139:

> "We cannot fix the liabilities of foreign owners to foreign seamen for injuries occurring at sea, or in other ports than our own; at least, nobody suggests that the Jones Act does so."

We respectfully submit for the Court's consideration the words of Judge Learned Hand in his dissenting opinion in *Kyriakos* v. *Goulandris* (1945), 151 F. 2d 132, 139, 140:

> "Further, unless we are to overrule The Paula, 2 Cir., 91 F. 2d 1001, liability in these circumstances will hereafter depend upon whether the foreign seaman signs on in a United States port or abroad; certainly that should not be critical. Of course it would be critical, if the ordinary doctrine of conflict of laws obtained, but we have the most categorical declaration in The Belgenland, supra,* that in all that relates to a maritime contract the law of the flag prevails. If the decision now to be made is to stand, we should frankly overrule The Paula, so capricious will be the result if we do not. And if we do overrule it, I should think, as I have already suggested, that it might perceptibly nettle those maritime powers whose ships frequent our shores, and which may, with warrant, believe that we should not attempt to take from them the power to adjust, contrary to their desires, legal relations with which we have no concern."

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* The Belgenland, 114 U. S. 355, 5 S. Ct. 860, 29 L. Ed. 152.

CONCLUSION

It is respectfully submitted that this Court should grant petitioner's application for certiorari.

Dated, New York, N. Y.
September 29, 1952.

Respectfully submitted,

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WILBUR E. DOW, JR.,
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No. 226

Supreme Court of the United States

OCTOBER TERM, 1952

J. LAURITZEN, *Petitioner*,

v.

EVALD JOHANN LARSEN, *Plaintiff-Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE ROYAL DANISH GOVERNMENT, AS AMICUS CURIAE, IN SUPPORT OF PETITION

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Supreme Court of the United States

OCTOBER TERM, 1952.

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J. LAURITZEN, *Petitioner,*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE ROYAL DANISH GOVERNMENT, AS AMICUS CURIAE, IN SUPPORT OF PETITION

The Royal Danish Government, as *amicus curiae,* respectfully submits this brief in support of the petition for certiorari in this case.

INTEREST OF THE ROYAL DANISH GOVERNMENT

The Royal Danish Government regards the decision below as constituting the abandonment by the United

States of the internationally accepted rule of comity that the law of the flag shall govern the internal affairs on board a vessel. Such a change in the substantive law to be applied to Danish ships is of grave concern to the Kingdom of Denmark.

The decision below would subject Danish shipowners to additional liability for injury to some seamen, but not to others who suffered identical injuries in a Danish or other non-American port, even though all members of the crew were Danish nationals serving on the same ship.

The decision below would impose an additional financial burden on Danish shipowners and thus reduce the maritime foreign exchange earnings upon which Denmark is so dependent. It would also cause confusion and dissension within the crews of Danish vessels.

SUMMARY OF ARGUMENT

The case raises an important question of the international applicability of a federal statute providing a remedy for injured seamen. The construction of the statute by the court below constitutes a change in the foreign policy of the United States—an abandonment of the principle of international comity that the "law of the flag" shall govern internal affairs on board ship. On a matter of such international importance the decision of the Supreme Court is appropriate.

There is a direct conflict between the court below and the New York Court of Appeals. There is also a division of opinion within the Court of Appeals for the Second Circuit.

The results of the decision below impose an unreasonable discrimination as among seamen on the same vessel who signed on in different ports.

ARGUMENT

1. Under the decision below the United States abandons the principle of international comity that the law of the flag shall govern employment relations on board ship. The practice of maritime nations has long been to allow the internal affairs of a ship to be governed by the law of the country whose flag the ship flies. On this point there is no disagreement. Judge Learned Hand, in his dissenting opinion in *Kyriakos* v. *Goulandris*, 151 F. 2d 132, 139, (2d Cir. 1945) stated:

> "As my brothers agree, it is generally accepted law that in all matters relating to 'the internal economy or discipline' of a ship 'the law of the flag' controls. I have gathered in the margin* a number of decisions which invoke this principle in varying applications; nobody disputes it; and it seems to me most undesirable, except for some pressing reason of domestic policy, to disregard it."

Although the principle of international comity is clear, it is far from clear that the Jones Act, 41 Stat. 1007 (1920), 46 U.S.C. § 688 (1946), was intended to modify the position of the United States with respect to that principle. The phraseology of the Jones Act (Petition, p. 4) certainly does not require such an interpretation *ex necessitate*.

Each of the two opinions relied upon by the court below recognized the dubious nature of the construction being applied to the Jones Act. In *Kyriakos* v. *Goulandris*, *supra*, which held that the Jones Act applied where the injury occurred in a United States port, Judge Augustus Hand admitted:

---

* Footnote omitted.

"... the matter is doubtful ...." (151 F. 2d at 136)

In the more recent case of *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597 (2d Cir. 1950), *cert. denied*, 341 U. S. 915 (1951), Judge Learned Hand stated:

> "To Judge Swan and me it seems, on the other hand, that, before we impute to Congress the will to change the long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose." (179 F. 2d at 600)

The decision of the court below, involves the construction of a federal statute; the result is admittedly doubtful; and the question has not been passed upon by this Court.

That the question is substantial there can be no doubt. As Judge Learned Hand in his dissenting opinion in *Kyriakos* v. *Goulandris, supra*, said:

> "Moreover—and this, I think, we should treat most seriously—it must often be irritating to the state of the flag for the state of a port of call to insist that its own notions of what is just between owner and crew shall supersede those satisfactory to the first state." (151 F. 2d at 139).

The decision of a major maritime country to abandon the basic conflict-of-laws rule for maritime cases is certain to have repercussions on the policies and laws of other countries. If the country in which a seaman signs articles insists upon applying its laws governing compensation for torts to injuries occurring in any part of the world, there will be pressure on other governments to apply their social laws to vessels that call at their ports and to sailors who sign articles there.

The international principle that the internal affairs of a ship are subject only to the laws of one country will have been abrogated.

2. The decision of the court below is in direct conflict with the decision of the New York Court of Appeals in *Sonnesen* v. *Panama Transport Co.*, 298 N. Y. 262, 82 N. E. 2d 569 (1948), *cert. denied*, 337 U. S. 919 (1949).

In the *Sonnesen* case, as in the case at bar, a foreign seaman signed on a foreign vessel in a port of the United States. In that case, as in this, negligence attributable to the owner occurred while the vessel was out of the territorial waters of the United States.

In the *Sonnesen* case, the New York Court of Appeals held that the Jones Act was inapplicable to

> "... a seaman of foreign residence and nationality, suing a non-American ship owner for an alleged tort committed on a non-American ship on the high seas. ... Nor does the signing of articles in an American port bring American law into the case." (298 N. Y. at 267, 82 N. E. 2d at 570).

In the instant case the District Court judgment in favor of the seaman for injury resulting from negligence which occurred in Havana, Cuba, was affirmed in a per curiam opinion of the Circuit Court of Appeals for the Second Circuit. 196 F. 2d 220 (1952).

Hence the conflict between the New York Court of Appeals and the Circuit Court of Appeals for the Second Circuit is direct.

In addition, an examination of the two cases, cited in the per curiam opinion below as controlling, reveals unique disagreement within the Circuit Court itself.

The first of these cases, *Kyriakos* v. *Goulandris, supra,* involved a Greek seaman who had signed on a Greek vessel in a United States port for a voyage beginning and ending in the United States, and who suffered injury in a United States port, due to negligence attributable to the owner. As for the right of the seaman to obtain relief under the Jones Act, a majority of the Court, consisting of Judges Augustus Hand and Frank, concluded:

> "Although the matter is doubtful we believe that he can." (151 F. 2d at 136)

Judge Learned Hand dissented, noting that he could "discover no reason of policy or of authority for displacing" the law of the flag by the Jones Act (*id.*, at 139).

The other case cited in the per curiam opinion below, *Taylor* v. *Atlantic Maritime Co., supra,* involved negligence on the high seas in failing to provide proper care for a foreign seaman on a foreign vessel, who had developed tuberculosis. The Court reluctantly held that the Jones Act afforded relief by virtue of the fact that the seaman had signed articles of employment in a United States port.

After observing that the result was "not as free from doubt as we could wish" (179 F. 2d at 598), Judge Learned Hand, who wrote the opinion, explained the division of views within the Court:

> "Judge Clark thinks that, since the overriding purpose of the Jones Act is to protect seamen, it should be understood to include alien seamen and that the law of the flag must yield. . . . To Judge Swan and me it seems, on the other hand, that, before we impute to Congress the will to change the

long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose. We of course recognize that it is only a question of interpreting the statute, not of power;[16] but the possible consequences of the innovation seem to us to forbid its ready assumption under the facile phrase of the 'policy of the Act.' Nor does the possible disadvantage, at which our view might put American seamen, seem to us considerable enough to imply such a purpose, for there will be, we should suppose, only rare occasions when American seamen will find themselves forced to accept the greatly inferior standards of wages and living which prevail on most, if not all, foreign ships. Moreover, we both find strong support for our view in the decision of the Court of Appeals in Sonnesen v. Panama Transport Company,[17] which is on all fours with the case at bar. Nevertheless, in spite of what we should hold, were we free, we think that, although Kyriakos v. Goulandris, supra,[18] can be distinguished because the injury took place on shore, the rationale of the opinion went further; and that it construed the Jones Act as imposing its terms upon all owners who sign on crews in an American port. We do not think it fitting (especially in my own case) to distinguish that decision by a circumstance which was not made pivotal; but rather that we should accept and apply its doctrine as broadly as it seems to have been intended to go." (179 F. 2d at 600)

Thus a majority of the court which decided the *Taylor* case in 1950 agreed here with the contrary holding

16 17 and 18 Footnotes omitted

of the New York Court of Appeals in the *Sonnesen* case. The majority, however, felt bound by the rationale of the circuit court's opinion in 1945 in the *Kyriakos* case, *supra*, to extend that decision and hold the Jones Act applicable not only to torts in the United States but to torts anywhere in the world. The answer to the important federal question which this case presents should not depend on the fortuitous circumstance that the *Taylor* case arose in 1950 rather than in 1945.

3. The decision below would necessarily result in discriminatory treatment as among Danish seamen on board the same vessel. Under the decision a Danish shipowner's liability to some of his seamen for injuries would be greater than his liability to other seamen of the same rating and nationality. Danish seamen who signed on in the United States would have the double protection of Danish laws and of the Jones Act; other Danish seamen would not. Such a situation would inevitably create a difficult problem of morale within the crew. As a matter of practicality, moreover, the problem could not be solved by establishing compensating differentials in the rates of pay for such seamen.

The discrimination as among crew members and the consequent difficulties for shipowners would undoubtedly become worse with the passage of time. As other countries imposed their notions regarding working conditions or terms of employment for seamen who sign on in their ports, a shipowner might be confronted with half a dozen different standards of liability toward different seamen of the same nationality on the same ship.

It has been urged that the Jones Act must be applied to foreign seamen on foreign ships in foreign ports, if the seamen signed articles in the United States, in order

to prevent discrimination against American seamen. This suggestion would appear to be specious in view of the difference between wages on foreign and American ships.

CONCLUSION

Thus it is seen that the instant case raises a substantial federal question on which there is an admitted conflict of decisions between the New York Court of Appeals and the Circuit Court of Appeals for the Second Circuit, and a division of opinion within the latter court. The petition for certiorari should therefore be granted and a definitive decision rendered by the Supreme Court in the exercise of its supervisory powers.

Respectfully submitted,

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Attorney for The
Royal Danish Government

COVINGTON & BURLING,
Of Counsel.

September 30, 1952

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Supreme Court of the United States.

OCTOBER TERM, 1952.

No. 226.

J. LAURITZEN,

Petitioner,

—against—

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

BRIEF OF THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS, *AMICUS CURIAE*, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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Of Counsel.

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Supreme Court of the United States.

OCTOBER TERM, 1952.

No. 226.

J. LAURITZEN,

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EVALD JOHANN LARSEN,

Plaintiff-Respondent.

BRIEF OF THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS, *AMICUS CURIAE*, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Statement.

The Government of the Kingdom of the Netherlands submits this brief in support of the petition for a writ of certiorari because of its interest in having an important question of federal law settled by this Court.

The question involved is, whether Section 33 of the Act of June 5, 1920, 41 Stat. 1007, Title 46 U. S. Code, §688, known as the Jones Act, applies to personal injuries suffered by an alien seaman on a foreign vessel, outside the territorial limits of the United States, simply because the seaman "signed on" in a United States port.

The petition, in substance, is a request to this Court to review the decisions of the United States Court of Appeals for the Second Circuit in the *Kyriakos* and *Taylor* cases.

These decisions, in our submission, constitute a substantial interference in the "internal economy", not only of foreign vessels, but of foreign nations. We need not emphasize that the matter is one of great importance to all maritime nations whose ships call at U. S. ports.

The ruling of the Court below concededly is a further extension of the field of application of the Jones Act, to cases where the sole point of contact with the United States is the place of "sign-on"—which ruling constitutes a total departure from the fundamental principle, that the *lex loci actus* (including the law of the ship's flag) governs alleged wrongs—a principle that was emphatically reaffirmed by this Court in *Uravic* v. *Jarka*, 282 U. S. 234, a case involving the application of the Jones Act to stevedores unloading foreign vessels in United States ports.

The Court of Appeals' decisions cited above appear to us to require urgently review by this Court on the grounds (to be amplified hereunder) that the reasons given for the Court's conclusion are unconvincing; that the views of at least a majority of the five Judges participating in these decisions are irreconcilable *inter se*; and that even the prevailing views were conceded to be "doubtful".

POINT I.

The reasons given for the decisions in the *Kyriakos* and *Taylor* cases, respectively, are in large measure mutually destructive.

Kyriakos v. *Goulandris*, 151 F. 2d 132, was decided by the Circuit Court of Appeals for the Second Circuit in 1945 (Judges A. N. Hand and Frank, Judge L. Hand dissenting). *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597, was decided by the United States Court of Appeals for the Second Circuit in 1950 (Chief Judge L. Hand and Circuit Judges Swan and Clark).

The *Kyriakos* case was the first occasion when a federal appellate court was called upon to determine whether an alien seaman who signed on a foreign vessel at an American port has the right to sue under the Jones Act. In the *Taylor* case, Chief Judge L. Hand, delivering the opinion of the Court, after citing (on behalf of a majority of the Court) various reasons why the Court should *not* follow the *Kyriakos* case; "were we free", nevertheless adhered to the "rationale" of the *Kyriakos* decision (p. 600), the Court being divided two to one as to the "reasons" for their unanimous conclusion.

A comparison between the reasons which led the majority in both cases to their conclusion (both times with expressed grave misgivings) will show the inner inconsistency of the reasoning of that Court:

Kyriakos Case	Taylor Case
A. "* * * the right of suit given by the Jones Act * * * was literally in perfectly general terms, and accordingly did not require express extension. When Congress used the word 'seaman' in the Jones Act it employed a word of general application, embracing men of any nation who sail the seas" (p. 136).	A. "The variant at bar is that the seaman signed articles in the United States. So far as such a claim sounds in tort, the law of the flag should still apply, which will not include the Jones Act" (p. 599). "To Judge Swan and me it seems * * * that, before we impute to Congress the will to change the long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose" (p. 600).
B. "The intention of Congress to benefit American seamen would not be served by a contrary construction of the statute, since it would tend to encourage the hiring of foreign seamen in American ports in preference to American seamen because the aliens would not have the right of suit against their employers if injury should occur in those ports, while the American seamen would" (p. 137).	B. "We of course recognize that it is only a question of interpreting the statute, not of power; but the possible consequences of the innovation seem to us to forbid its ready assumption under the facile phrase of the 'policy of the Act'. Nor does the possible disadvantage, at which our view might put American seamen, seem to us considerable enough to imply such a purpose * * *" (p. 600).

Kyriakos Case	Taylor Case
"* * * the sweeping terms of the statute * * * indicate a tendency to give the statutes in aid of seamen a liberal interpretation which would seem to cover the rights of the libellant in the present case. It would not invade the internal economy of foreign vessels further than has already been done and would pro tanto lessen a competitive advantage to foreign shipowners in hiring aliens rather than Americans for their crews" (p. 138).	

The majority of the Court in both cases were in agreement that—

> "liability for a tort committed on board a vessel while the vessel is in the territorial waters of a state is determined, if it affects only the internal economy or discipline of the vessel, by the law of the state whose flag the vessel flies." (151 F. 2d, at p. 138—citing the Restatement of Conflict of Laws, § 405.)

The Court in both cases might well have paid greater attention to Sections 404 and 406 of the same Restatement.

POINT II.

The language of the Jones Act clearly shows an intention not to prejudge the extent of its application to foreign ships and foreign seamen.

While the Act reads, "*Any* seaman who shall suffer personal injury in the course of his employment," it seems obvious that Congress cannot have intended to embrace "men of any nation who sail the seas". To speak of "language * * * literally, in perfectly general terms", which "accordingly did not require express extension" to *foreign* seamen (*Kyriakos* case, at p. 136), seems to involve a *petitio principii*. On the contrary, the language of the Act strongly suggests a purpose to embrace only those cases where the "*common law*" would have given a "right or remedy" had it extended to seamen—that is to say, in those situations where, according to accepted principles of the conflict of laws, the common law would control.

We submit that there is much to be said for the view that Congress deliberately left open all questions pertaining to the conflict of laws, to be decided by our Courts in accordance with established principles.

POINT III.

The reasons advanced by the Court of Appeals in the *Taylor* case to justify the proposed departure from "the long settled international understanding that the law of the flag controls in such matters", are of doubtful validity.

The Court's majority in the *Taylor* case sought to justify exclusion of the law of the flag in these words:

> "So far as (the claim) sounds in contract, it is first necessary to decide whether the question is one of interpreting the extent of the owner's engagements or of their performance; and although that often involves considerable casuistry it appears very clear that here the only question is how comprehensively the owner's promise to employ the seaman shall be construed. Is there to be an implied term that, if injured, the seaman may invoke the Jones Act? Obviously, as a matter of any actual intent that would not be true; yet, when one considers that the employment imposes upon the owner exactly the same obligations as though he had accepted them, it becomes manifest that the extent of his assumed duties is at stake; and if that is not, strictí juris, a question of interpretation, there is no rational reason in solving it to resort to another law."

We raise the following questions, without attempting to answer them:

How is the prevalence of the law of the place where the contract is made over the law of the flag to be

reconciled with the following passage occurring in the paragraph immediately preceding:

> "When a seaman signs articles in a foreign port for service on an American ship, and is injured on the high seas, there is no embarrassment, whether one regards the claim as sounding in tort, or in contract. So far as it sounds in tort, it depends upon American law—the law of the flag—; so far as it sounds in contract, although the law of the place where the contract is made will ordinarily apply, it is a well-recognized exception that in all that concerns the 'internal economy' of the ship the law of the flag controls."?

Is the phrase "internal economy" to mean one thing in the case of American vessels, and another in the case of foreign vessels?

What justification is there for treating a claim for personal injuries under the Jones Act as one "sounding in contract"?

How much "casuistry" should our courts indulge in for the sake of affording an alien seaman signing on a foreign vessel an *election* between the right either to receive *compensation irrespective* of the shipowner's negligence, or to recover *damages* for *wrongful* injury?

Even if, by means of theoretical subtleties, a claim "sounding in contract" can (in a particular case) be spelled out, can there be any doubt that the *dominant* element is the *tort*—thus again establishing the "paramount" position of the law of the flag?

Why should a claim be treated as "sounding in contract" where the liability sought to be enforced exists (if at all) entirely independent of the parties' agreement?

Is it right that a matter of such importance to the international shipping community be made to depend upon considerations so unsubstantial?

CONCLUSION.

The petition for a writ of certiorari should be granted.

Dated: New York, N. Y., October 1, 1952.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,
Petitioner,

against

EVALD JOHANN LARSEN,
Plaintiff-Respondent,

BRIEF OF *AMICI CURIAE* ON BEHALF OF THE ROYAL NORWEGIAN GOVERNMENT

JAMES S. HEMINGWAY,
Counsel for Amici Curiae.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,
Petitioner,

against

EVALD JOHANN LARSEN,
Plaintiff-Respondent,

BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITION

The undersigned, as counsel for

THE ROYAL NORWEGIAN GOVERNMENT

respectfully files as amici curiae the accompanying brief with the consent of the petitioner and respondent pursuant to Rule 27, paragraph 9(b) of the Rules of this Court.

JAMES S. HEMINGWAY,
Counsel for Amici Curiae.

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IN THE

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BRIEF OF *AMICI CURIAE* ON BEHALF OF THE ROYAL NORWEGIAN GOVERNMENT

I

ARGUMENT

The Royal Norwegian Government has a substantial interest in an interpretation by the Supreme Court of the United States of the scope of the application of the Jones Act to the facts herein.

The Royal Norwegian Government has provided by laws similar to the Workmen's Compensation Acts enacted in the United States of America for the care of ill and injured seamen. A brief outline of the remedies available to Norwegian seamen under Norwegian law is as follows:

(1) Hospitalization, medical care without cost to the seaman, board and lodging during the period of con-

valescence until declared fit for duty, and support for his family or dependents during the same period when signed off a Norwegian ship because of disability.

(2) Repatriation and wages during the period of disability; limited, however, to two months' wages for officers and one month's wages for others.

(3) Compensation from the national insurance funds corresponding to the percentage of disability if the disability is caused by an injury and is lasting. The purpose of this insurance is to compensate the seaman for his financial losses and is similar to Workmen's Compensation Acts enacted in various states of the United States. The measure of compensation is, of course, determined by the cost of living in Norway. In case of death the widow and minor children or other dependents will receive a pension.

A seaman cannot sign away his above mentioned rights under Norwegian law.

The expenses of this national insurance plan for seamen is partly paid direct by the owner of the ship, the seaman signed off partly by national insurance funds. Contributions to the national insurance funds are required of all Norwegian shipowners, depending upon the number of seamen employed and the tonnage of the ship, *Law Respecting Seamen of February 16, 1923 No. 1 as amended; Law Concerning Insurance Against Disease of June 6th, 1930 No. 18 as amended; Law Relating to the Insurance of Seamen Against Accidents of June 24th, No. 11 as amended; Law Relating to Seamen's Pension of December 3rd, 1948, No. 7.*

Seamen who sign on Norwegian ships all over the world agree in their standard articles to serve under and to be bound by agreements obtained by nationally sanctioned collective bargaining and the provisions of Norwegian law.

The articles cover the entire agreement between the seaman and the ship owner. Thus under Norwegian law Norwegian Consuls must make certain that seamen on Norwegian ships sign articles incorporating Norwegian law. A substantial number of Norwegian seamen sign articles

every year in the United States for employment on Norwegian vessels engaged in international trade.

II

CONCLUSION

It is respectfully submitted that this Court should grant the petitioner's application for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit entered in this case on May 2, 1952.

Dated: New York, N. Y.,
October 2, 1952.

Respectfully submitted,

THE ROYAL NORWEGIAN GOVERNMENT

By JAMES S. HEMINGWAY
Counsel for The Royal Norwegian Government

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

BRIEF OF AMICI CURIAE ON BEHALF OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA AND THE SAILORS' UNION OF THE PACIFIC

RICHARD M. CANTOR,
Counsel for Amici Curiae.

GEORGE HALPERN,
of Counsel.

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THE ROYAL NORWEGIAN GOVERNMENT FILED A BRIEF IN WHICH IT REFERRED TO 7,000 NORWEGIAN SEAMEN SIGNING ON IN AMERICAN PORTS IN EACH YEAR. THIS BRIEF WAS WITHDRAWN, AFTER THIS ONE WAS PRINTED. THE NEW BRIEF, THEREAFTER FILED WITH THIS COURT CONTAINS NO SUCH REFERENCE.

IT IS RESPECTFULLY SUBMITTED THAT OUR REFERENCE TO THE "7,000 NORWEGIAN SEAMEN" IS BASED UPON SUCH ORIGINAL BRIEF SERVED UPON PLAINTIFF-RESPONDENT.

Dated: October 3, 1952

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

BRIEF OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA AND THE SAILORS' UNION OF THE PACIFIC, AMICI CURIAE, IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Statement

The seventy thousand American seamen represented by the Seafarers International Union of North America and the Sailors' Union of the Pacific will be seriously affected by the action of this Court upon this application.

They respectfully submit that the preservation of the Merchant Marine of the United States of America, so vitally important to the economy and national defense of this country, and the seamen dependent on it, require that our laws and public policy be impartially and equally applied to all vessels and seamen engaging in carrying its foreign commerce, and employing our ports and facilities toward that end.

Permitting the "law of the flag" to govern in all respects the activities of foreign vessels and foreign seamen, in

our ports, and operating in our trade, would be an act of discrimination against our own Merchant Marine and our seamen. It is both conceded and implicit in the argument favoring review, that the economic standards imposed by foreign law are lower than ours. Thus, foreign vessels have a competitive advantage. The ruling of the Court below affords the American Merchant Marine no discriminatory advantage. It merely imposes equal obligations upon all who do business here.

Petitioner and the intervening Governments are seeking a favored position, to the detriment of our own interests.

Such a double standard for foreign and American interests within our jurisdiction, can result only in the deterioration of our Merchant Marine, the distress of our seamen and injury to our economy. Our Merchant Marine is being steadily whittled away by the encroachment of foreign shipowners, employing vessels purchased in a great percentage of cases, from our own Government, at ridiculously low prices, and labor hired at a far lower scale.

Large organizations of foreign seamen have set up permanent headquarters in our principal ports. Here they maintain regular hiring halls, and furnish a constant pool or supply of labor to foreign operated ships, such as the one in the case at bar. Reference is respectfully made to the brief of the Royal Norwegian Government. On page "3" it is stated that this one nation signs on about 7,000 Norwegians every year in the United States.

During the last war, the Seafarers International Union of North America and the Sailors' Union of the Pacific lost a great many of its members as casualties, both dead and injured, in the defense of our country. American seamen responded quickly and without hesitation to the call in time of national crisis. It will be difficult to furnish the necessary manpower in timely fashion in the future, unless our merchant marine is preserved against discriminatory foreign competition. Our foreign "friends" of today may be neutral or ranged against us in the conflict of tomorrow.

The United States of America can rely upon no other merchant marine, but its very own.

It cannot be too strongly urged that acceptance of this matter for review would give undue weight to the discredited doctrine of extraterritorial privilege, implicit in the application of foreign law to foreign nationals using our ports for the purpose of competing in our commerce.

As set forth in the brief of the plaintiff-respondent, this Court has long since repudiated the principle of the "law of the flag". It has applied the "law of the forum" to instances of lesser importance to our public welfare.

The clarity of the decision below; its harmony with the principles enunciated by this Court; its fairness, and the fact that petitioner and his supporters are seeking a favored and discriminatory position in our economic life, all combine to plead that no action is required by this Court.

Argument

1. The rights of seamen cannot, in the light of the progress of law, be governed by ancient Hanseatic principles.

Despite attempts to cling to the old rules, and the encroachments of the common law and principles of Workmen's Compensation, the law of Admiralty in this country merged these conflicting rules by the blending of ancient admiralty principles with modern concepts of jurisprudence, which enlarged and extended the rights of seamen.

It would be wrong to circumvent and deny the relief flowing from such rights by resurrecting the outmoded jurisdictional rule of the "law of the flag" in instances such as this one.

The Jones Act was the culmination of a developing trend for the protection of seamen.

This Act is broad in scope, affording protection to any seaman injured in the course of his employment. It includes aliens as well as citizens. All who submit themselves

to the jurisdiction of American ports are governed by its terms.

There are no principles of international comity to which all nations subscribe. The very term "law of the flag" indicates the sovereign right of each nation to legislate within its jurisdiction. . . .

There is no sanction for imposing foreign law in the forum of another nation.

Such a concept has long since been repudiated. In *Patterson* v. *Bark Eudora,* 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002 (1903), this Court stated the rule to be:

> "It is undoubtedly true that for *some* purposes a foreign ship is to be treated as foreign territory" (p. 176). (Emphasis ours.)

And then went on to say:

> "Yet when a foreign merchant vessel comes into our ports, like a foreign citizen coming into our territory, it subjects itself to the jurisdiction of this country" (p. 176).

On page 178, the Court said:

> "The implied consent of this Government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the nations to which these vessels belong, may be withdrawn."

And on page 179:

> "We are of the opinion that it is within the power of Congress to protect *all sailors shipping in our ports* on vessels engaged in foreign or interstate commerce, whether they belong to citizens of this country or a foreign nation and that *our Courts are bound to enforce those provisions in respect to foreign equally with domestic vessels.*" (Emphasis ours.)

Reference is respectfully made to plaintiff-respondent's brief for other rulings of this Court on the subject.

Incidentally, the availability of more than one remedy or more than one forum does not constitute a threat of double recovery.

2. Public welfare and public policy require that the ruling in the Court below be sustained.

The matter herein does not concern an isolated foreign seaman who signed on a foreign vessel just casually touching our ports.

It does concern foreign vessels constituting more than 40% of the total of all vessels using our ports.

No elaborate and detailed statistics are required to illustrate the large number of foreign flag vessels, which are regularly engaged in our commerce, rarely calling at their nominal home ports.

Nor can there be any doubt as to the large number of foreign seamen who are maintained in American ports for the purpose of being held available to serve on such foreign vessels.

That such vessels enjoy a distinct competitive advantage over the American cannot be denied. And the petitioner herein leaves little doubt that the standards set by foreign laws and unions do not meet those of this country.

To permit such inequality, favoring foreign vessels competing with American vessels in American ports, results in discrimination against the latter.

No plea is made for the exclusion of foreign vessels nor for any advantage to those of America.

The decision below merely establishes the principle of equality of law to all who enter this jurisdiction.

3. The application of American law to all within our jurisdiction does not constitute a subsidy, direct or indirect.

However, no apology is made for the policy of subsidies. Historically that is our policy. We have granted subsidies to our Merchant Marine and other means of transportation, and we still do. This policy we share with other great nations, for the very same reasons which are both military

and commercial. It is in the national interest to foster and preserve our Merchant Marine. The granting of subsidies is merely an aspect of that important over-shadowing policy.

Congress has criticized the payment of subsidies only to the extent that they were granted in the guise of payment for services. But such criticism was directed against the improper labelling of what actually was a subsidy grant. The subsidies remained. Only the nomenclature was changed. This policy remains unaltered.

Placing foreign shipowners on a parity with domestic ones cannot be considered as a subsidy to the latter.

On the contrary, should petitioner prevail, then foreign vessels would be placed in a more favorable position at the expense of the economy of this country.

Nor can equality under the law be considered a device to reduce the tax burden of the American citizen, unless it be deemed that a prosperous Merchant Marine would contribute a larger share of the tax dollar.

On the other hand, petitioner should not expect the American taxpayer to foot the bill for the unfair and discriminatory advantage of the foreign shipowner.

Foreign shipowners who earn profitable dollars in doing business in the United States should have no cause to complain if the cost of doing such business must likewise be measured in dollars.

4. The matter of shipping articles is of grave concern to American seamen.

It has been our judicial and legislative policy to require articles to be fair, complete and without ambiguity. Any trace of advantage to a shipowner therein, without a corresponding advantage to a seaman, renders such articles void.

To presume, as does petitioner, that articles entered into in the United States, should be governed by foreign law, is repugnant to our public policy and contrary to elementary rules of contract.

The articles used by petitioner were purposefully vague in order to hide the real scope of the voyage and the design or plot underlying the entire operation. Because they are vague and do not define the exact scope of the voyage, they are void and not binding on the seamen, allegedly parties thereto.

On the face of the articles in the record, it is clear that the subject vessel sailed from and returned to New York.

Nevertheless, petitioner argues that since the articles were indefinite and did not specifically state the scope of the voyage, the actual return of the vessel, and plaintiff-respondent's right to expect such return, were of no effect in determining whether this was a voyage from and to New York. Should self-serving and tricky contractual language be permitted to conceal and deny actual facts?

Just as foreign vessels must subscribe to American safety and other standards while in our ports, so must they accept the same standards of law for the protection of seamen hired in our ports.

CONCLUSION

The decision of the Court below clearly establishes the obligations and responsibility of all who use our ports. It is not in conflict with any other federal cases. It is in keeping with our public policy. It promotes our national welfare.

Certiorari should be denied.

Respectfully submitted,

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Counsel for the Seafarers International Union of North America and Sailors' Union of the Pacific.

GEORGE HALPERN,
of Counsel.

October 6, 1952.

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No. 226

Supreme Court of the United States

OCTOBER TERM, 1952

J. LAURITZEN, *Petitioner*,

v.

EVALD JOHANN LARSEN, *Plaintiff-Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE ROYAL DANISH GOVERNMENT, AS AMICUS CURIAE

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN, *Petitioner*,

v.

EVALD JOHANN LARSEN, *Plaintiff-Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE ROYAL DANISH GOVERNMENT, AS AMICUS CURIAE

The Royal Danish Government, having obtained and filed written consent of counsel for the petitioner and of counsel for the plaintiff-respondent, respectfully submits this brief as *amicus curiae*.

JURISDICTION

The final judgment of the United States Court of Appeals for the Second Circuit was entered on May 2, 1952, and appears on pages 129-130 of the Record. The

petition for a writ of certiorari was filed on July 25, 1952, and was granted October 13, 1952 (R. 132). The jurisdiction of this Court is conferred by Title 28, United States Code, Section 1254.

STATEMENT OF THE FACTS

The respondent, Evald Johann Larsen, is a citizen and resident of Denmark and the holder of a certificate issued by the Royal Danish Government qualifying him as an able-bodied seaman (R. 16, 23). On July 25, 1946, while temporarily in the port of New York, Larsen signed shipping articles by which he agreed to serve aboard the S. S. Randa for a voyage to "South America and other places" as an able-bodied seaman at the standard rate of pay agreed upon by the Danish Seaman's Union (R. 16, 45, 46). The S. S. Randa was a steamship flying the Danish flag, registered in Denmark with Copenhagen as its home port, and was owned and operated by petitioner, J. Lauritzen (R. 16, 45). According to the terms of the shipping articles which Larsen signed, the terms and conditions of employment were to be controlled by "the regulations contained in the [Danish] Seaman's Law" (R. 45).[1]

The S. S. Randa sailed from New York with Larsen aboard and, after visiting several South American ports, arrived in the harbor of Havana, Cuba (R. 25, 26). On October 7, 1946, while the vessel was still in Havana, Larsen sustained injuries to his left wrist and left ankle as the result of a fall into the hold of the vessel while engaged in inserting hatch boards with a fellow seaman (R. 26, 27, 33-34).

[1] See stipulation of counsel on English translation of portions of the articles, which stipulation was filed with this Court on November 24, 1952.

Larsen was hospitalized in Havana, returned to New York, was hospitalized there, and given out-patient treatment in Brooklyn, New York until January 9, 1947, all at petitioner's expense (R. 16, 49). In addition, petitioner paid Larsen all wages due him up to the date of the accident, the seven days' additional wages to which Larsen was entitled under Danish maritime law, and one month's maintenance and subsistence while he was undergoing out-patient treatment in New York (R. 16, 20, 39-40, 90-92). On January 9, 1947, Larsen was declared fit for duty, and returned to work as a seaman on January 27, 1947 (R. 16, 40-41).

This action was commenced in the United States District Court for the Southern District of New York on May 6, 1947 (R. 3). On December 7, 1951, the jury returned a verdict in favor of Larsen (R. 115-116). Petitioner's several motions to dismiss on the grounds that the court lacked jurisdiction and that Danish law, rather than the Jones Act,[1] was applicable were denied (R. 61, 97, 116-117).

On May 2, 1952, the United States Court of Appeals for the Second Circuit affirmed the judgment of the District Court, per curiam, on the authority of *Kyriakos* v. *Goulandris*, 151 F. 2d 132 (2d Cir. 1945) and *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597, (2d Cir. 1950), *cert. denied*, 341 U.S. 915 (1951), (R. 127-128).

INTEREST OF THE ROYAL DANISH GOVERNMENT

The Royal Danish Government is interested in the instant case because it involves a controversy between

[1] Section 33 of the Merchant Marine Act of June 5, 1920, c. 250, 41 Stat. 1007; Title 46, United States Code, § 688.

a Danish citizen seaman (the respondent) and a Danish ship owner (the petitioner), resulting from the seaman's injury aboard a vessel flying the Danish flag at a time when the vessel was moored in the harbor of Havana, Cuba (R. 16, 33-34). Moreover, the articles of agreement signed by petitioner and respondent provided that controversies arising thereunder should be decided "on the basis of regulations contained in the [Danish] Seaman's Law" (R. 45).[1]

Until the pending case arose, controversies of this nature between a Danish citizen seaman and the owner of a Danish vessel had traditionally been determined in accordance with Danish law under the long established international rule of comity that the flag of a vessel shall determine the law to be applied to matters concerning the internal economy and discipline of a ship. The decision of the court below would abrogate this rule of comity with the result that controversies of this nature would be settled in accordance with the municipal law of the country in which the articles of agreement were executed.

The Danish shipping industry has for decades been an important segment of the Danish economy. Generally, in view of Denmark's shortage of United States dollars in recent years, the dollar earnings of the Danish Merchant Marine have become even more significant to the economy of Denmark. Consequently, any change in the rule of comity which would be likely to result in increasing the United States dollar liability of Danish ship owners is a matter of interest not only

[1] See stipulation of counsel on English translation of portions of the articles, which stipulation was filed with this Court on November 24, 1952.

to Danish ship owners themselves but also to the Royal Danish Government.

Furthermore, pursuant to Danish law, a Danish seaman is entitled to file any claim arising out of personal injury directly with or through the appropriate Danish Consulate (R. 21). Consequently, if the rule of comity is abrogated, the Danish Consuls with whom such claims are filed will have additional burdens imposed upon them to ascertain in each case the country in which the particular seaman involved signed his shipping articles and whether such country still follows the rule of comity or the new principle established by this case. Any decision which results in the imposition of new responsibilities on Danish Consuls is a matter of interest to the Royal Danish Government.

The filing of this brief has been delayed because the Royal Danish Government, upon learning of the order of this Court granting writ of certiorari, felt it desirable to obtain the opinions of the Danish Shipping Administration, the Federation of Danish Ship Owners, and the Danish Seaman's Union before formulating its views.

ARGUMENT

At the outset, it should be noted that affirmance of the judgment below will necessarily result in the abrogation of a rule of comity which has been adhered to for decades by all of the maritime nations of the world.

This rule of comity was described by Judge Learned Hand, in his dissenting opinion in *Kyriakos* v. *Goulandris*, 151 F. 2d 132, 139 (2d Cir. 1945), as "a well settled principle—a principle moreover which it seems to me desirable to preserve intact" and which he and Judge Swan described in *Taylor* v. *Atlantic*

Maritime Co., 179 F. 2d 597, 600 (2d Cir. 1950) as "the long settled international understanding that the law of the flag controls" in matters relating to the internal economy and discipline of a vessel. Because this rule of comity has been generally accepted by all maritime nations, it would seem appropriate to hold that it had been abrogated only if the competent authorities of the United States have manifested an intention so to do. Judge Hand, in his dissent in the *Kyriakos* case, *supra*, observed that courts of the United States should "demand the clearest warrant before we substitute the Jones Act—primarily at any rate a local statute—for the pertinent law of [the flag of the vessel]" (at p. 139).

According to petitioner, there is no clear expression of Congressional intent (Pet. Brief, pp. 6-26). And Judge Augustus Hand and Judge Learned Hand agree. Judge Augustus Hand, in his opinion in the *Kyriakos* case, *supra*, said (at p. 136):

> "We are thus called upon to determine whether an alien seaman who signed on in an American port for a voyage beginning and ending in American waters can sue under the Jones Act. Although the matter is doubtful we believe that he can."

In the *Taylor* case, *supra*, Judge Learned Hand said (at p. 600):

> "' . . . before we impute to Congress the will to change the long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose."

No congressional "will to change" the rule can be inferred by reasoning that the purpose of the Jones Act is to benefit American seamen and that this purpose will be achieved if the rule of comity is abrogated and the law of the flag supplanted by the law of the country where a seaman happens to sign shipping articles. For the benefits to American seamen, as a practical matter, would be negligible. As Judge Hand pointed out in one of the two decisions relied upon to affirm the present ruling:[1]

> ". . . there will be, we should suppose, only rare occasions when American seamen will find themselves forced to accept the greatly inferior standards of wages and living which prevail on most, if not all, foreign ships."

On the other hand, adoption of the rule—that the law of the place where the contract was made shall govern in cases involving injuries to seamen aboard foreign vessels outside the territorial waters of the United States—may work serious hardship on some American seamen. For example, an American seaman may, through circumstances beyond his control, find himself stranded in a port of a foreign country whose maritime laws confer on seamen relatively few benefits. Regardless of the nationality of the vessel on which he may sign in order to return to the United States, affirmance of the decision below will mean that courts should apply the law of the country where the seaman joined the vessel, even though the law of the vessel's flag would be more favorable to him.

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[1] Taylor v. Atlantic Maritime Co., 179 F. 2d 597, 600 (2d Cir. 1950); *cert. denied*, 341 U.S. 915 (1951).

At the same time, moreover, the decision will give rise to discrimination amongst Danish seamen on Danish vessels. Under the rule that the law of the flag governs, all cases of personal injury to seamen aboard Danish vessels are determined in accordance with Danish law, regardless of where they may have signed their shipping articles. Thus, all seamen aboard Danish vessels have in the past been treated equally in such matters. If the rule of the decision below is adopted, the fortuitous circumstance of where a seaman signs on a Danish vessel will determine the law to be applied in the event that he is injured while serving on the vessel. Judge Learned Hand, in his dissenting opinion in the *Kyriakos* case, *supra*, said (at p. 139):

> "It is a hardship to owners, and it may be to seamen, to have their legal relations depend upon the accident of the port of call at which the ship puts in; it is impossible to adjust affairs to constantly shifting standards, some of which will favor one party, some another."

Any rule which requires the application of different legal standards to similar accidents occurring to seamen of equal rank on the same Danish vessel, depending upon where each seaman signed the shipping articles, will cause confusion and dissension within the crews of Danish vessels with attendant deterioration of their morale. At the same time, such a multiplicity of laws relating to injuries to seamen may subject Danish ship owners to additional liability and increased financial burden.

Under the present rule of comity whereby the law of the flag governs, both Danish ship owners and sea-

men are assured of one standard of rights and duties, regardless of the nationality of the seamen or the place where they may have joined the ship. If the decision below is affirmed, a Danish ship owner will be subject to varying standards of liability depending upon the law of the port where he engages his seamen, and both ship owners and seamen will be uncertain what their rights and duties are.

It is natural to expect that a Danish ship owner will prefer the standard of liability of Denmark, which standard he knows, understands and is required to support. Therefore, whenever possible, a Danish ship owner will employ his seamen in Denmark or in countries which allow the law of the flag to control the internal economy and discipline of his vessel. On the other hand, Danish seamen will be encouraged to sign shipping articles only in those countries whose laws are especially favorable to seamen. Conversely, a Danish ship owner will be reluctant to hire seamen while in such ports. This situation may result in the stranding of unemployed Danish seamen in American and other foreign ports with consequent ill effects to both Denmark and the country where the seamen are stranded. Precisely the same conflict of interest between ship owners and seamen who are nationals of other maritime nations will also arise with similar results.

CONCLUSION

The Royal Danish Government respectfully suggests that these considerations all indicate the undesirability of overturning the long established and internationally accepted rule of comity whereby the law of the flag governs the internal economy and discipline of a vessel,

and that the effect of the decision of the court below will work serious injury to Danish seamen and ship owners alike with no concomitant benefit to American seamen or ship owners.

Respectfully submitted,

JOHN LORD O'BRIAN
Attorney for The
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COVINGTON & BURLING,
Of Counsel.

November 26, 1952

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Appellant,

against

EVALD JOHANN LARSEN,

Appellee.

BRIEF OF AMICI CURIAE ON BEHALF OF PETTER D. PEDERSEN ET AL. AND CONSENT TO FILE

HARRY D. GRAHAM,
Counsel for Amici Curiae.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,
Appellant,

against

EVALD JOHANN LARSEN,
Appellee.

CONSENT TO FILE BRIEF AS AMICI CURIAE PURSUANT TO RULE 27, PARAGRAPH 9(a) OF THE RULES OF THE UNITED STATES SUPREME COURT

The undersigned, counsel for appellant and counsel for appellee, hereby consent to the filing of the brief herein by Harry D. Graham as counsel for Petter D. Pedersen et al. of amici curiae.

Dated, New York, N. Y.,
November 24, 1952.

James M. Estabrook
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Counsel for Appellant.

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Counsel for Appellee.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,
Appellant,

against

EVALD JOHANN LARSEN,
Appellee.

BRIEF AS AMICI CURIAE OPPOSING APPELLANT

The undersigned, as counsel for Petter D. Pedersen et al., respectfully files as amici curiae the accompanying brief with consent of the appellant and appellee pursuant to Rule 27, paragraph 9(a) of the Rules of this Court.

Preliminary Statement

The fundamental issue presented by this case is the extent of coverage of Sec. 33 of the Merchant Marine Act of June 5, 1920, 41 Stat. 1007, Title 46 U. S. Code, Sec. 688, commonly known as the Jones Act.

In order to properly answer this question, the intent of the Congress at the time of its enactment must be determined.

Thirty-eight years ago, on June 28, 1914, from the underbelly of Europe, the echos of shots reverberated throughout the world. To the day, a month later, war in Europe broke out.

Within a few months thereafter this nation, whose merchant fleet was composed of only a few nondescript craft mostly of sail, suddenly found itself deprived and virtually stripped of the foreign flag facilities upon which American industry for decades had relied and depended for the transportation of its exports and imports. To remedy this situation and to prevent such a recurrence, steps were taken by the Congress for the enactment of suitable legislation intended to develop an American merchant marine which would render this nation independent of foreign carriers and at the same time constitute an effective auxiliary to our naval force.

The following year, 1915, in accord with its declared intent, the Congress enacted the Seamens Act of 1915 and thereby became the first nation in the world to liberate and emancipate the seaman from the shackles of serfdom and involuntary servitude and confer upon him some protective welfare measures and thus attract young men to the sea to man this planned merchant marine. As part of this general legislation it modified the "Half-Wage Law" (Title 46 U. S. Code 597), making its provisions applicable and enforceable in our courts for the welfare of seamen on board all vessels in our ports, irrespective of the seamen's nationalities or the flag of the vessel, thereby enabling alien seamen to leave their foreign flagged vessels in our ports and help man this planned fleet.

In 1916, pursuing its declared intent of building up an American merchant marine, the Congress then enacted the Shipping Act of 1916, providing for the welfare of potential owners of this fleet which would come to pass. It established, in effect, Limitation of Owners Liabilities, a code for shipping, and granted official recognition to certain trade practices while declaring others illegal. To regulate and control this planned merchant fleet, the Congress created a United States Shipping Board and, realizing the impossibility of private capital to provide an adequate merchant marine except over a long period of years, it also created the Emergency Fleet Corporation as the

agency of the government for the construction and operation of the vessels of this planned fleet.

In 1917 this nation entered the conflict now known as World War I. The vessels then built and acquired by this nation for the merchant service were not only manned by such American Seamen as were available but were manned by men of every nationality (enemy alien excepted), race and creed.

The immigration laws (Title 8 U. S. Code 376) (40 Stat. 544, as amended May 9, 1918) were liberalized to encourage alien seamen to man this fleet because of the lack of adequate American seamen, and they were granted the protections to which American citizens were entitled.

At the close of World War I, the Emergency Fleet Corporation had acquired some 3,000 ocean-going steamships and the twilight was closing upon the era of sail.

In 1920 the Congress, again declaring that its intent and the purpose of the legislation was to encourage the upbuilding of a privately owned and operated American merchant marine, enacted the Merchant Marine Act of 1920. By this Act it carried forward the regulatory features of the 1916 Act, the Seamen's Act of 1915, provided for the establishment of trade routes and the employment of these vessels therein by the Shipping Board and provided certain other attractive features in order to encourage, and ultimately transfer to, private American ownership. It enacted the Suits in Admiralty Act on March 9, 1920, following with the High Seas Death Act, without distinction as to flag or alienage, on March 30, 1920. On June 20, 1920, the very same Congress enacted legislation (46 U. S. Code 882) permitting the carriage of a limited number of passengers upon cargo vessels, exempting the carrier from "passenger vessel" regulations and bestowing this same privilege upon cargo vessels of foreign flag provided the same privilege was granted to American vessels by that foreign country, otherwise restricting such foreign vessels. Following its declared intent, as noted by this Court in *Detroit Trust Co. vs Barlum Steamship Co.*, 293 U. S. 21, the Congress on the same day enacted the Ship Mortgage

Act and Lien Act of 1920 (46 U. S. Code Secs. 911-984), making the lien features thereof (Sec. 971) applicable to every vessel, regardless of nationality. On the same day the Congress amended the defective Seamen's Act of 1915 (46 U. S. Code 688) by enacting what is commonly known as the Jones Act, setting up therein the respective rights, duties and liabilities between employers and seamen, without distinction as to flag or nationality.

Argument

POINT I

The Jones Act is equally applicable to all operators and seamen, regardless of nationality, whenever the vessel, regardless of flag, is operated from our ports in competition with the American Merchant Marine.

Just as Congress in 1914 declared its intent to free this nation from dependence upon foreign operators for the carriage of our imports and exports and to encourage and build a strong, healthy merchant marine of our own, so has each succeeding Congress reiterated that statement in the succeeding thirty-eight years of shipping legislation.

It must be remembered that, just as in the recent conflict, in World War I the allied fleet was composed of vessels of many flags and seamen of many nationalities. In assigning crew members and replacements, no distinction as to the nationality of the crew member or the vessel's flag was made. Indeed, replacements of crew members were made with whatever seamen were available, regardless of nationality, in order to fully prosecute the war, just so long as the seaman was loyal to the cause. Cf. *The Santa Elena*, 271 F. 347, 349.

The powers of Congress over foreign vessels in our ports was fully considered in *Patterson* v. *The Eudora*, 190 U. S. 169, which reviewed decisions of this Court prior thereto

and which case was later referred to in *Strathearn* v. *Dillon*, 252 U. S. 348.

It is well settled that this government then, as now, had the power to determine upon what terms and conditions vessels of other countries might be permitted to enter our harbors to conduct business and to impose conditions upon the shipment of sailors regardless of nationalities in our own ports and make them applicable to foreign as well as domestic vessels.

And, as this Court stated in *Strathearn* v. *Dillon*, supra, there can be no doubt as to the authority of Congress to pass statutes applicable to foreign vessels in our ports and controlling the *employment* and payment of seamen as a condition of the right of such foreign vessels to enter and use our ports.

The Jones Act, as is so clearly reflected therein, is simply a statute regulating the relationship of employer to employee in the waterborne phase of a particular industry—the shipping industry. It confers upon any seaman within our jurisdiction an additional right of action to that which he may have under the general maritime law and the High Seas Death Act by virtue of his relationship of employee to employer for injuries sustained in the course of his employment, without distinction as to his nationality, the flag of the vessel or the nationality of the employer.

The general terms used by the Congress, as will be illustrated, were wisely chosen. Had it been the intent of Congress to exempt foreign operators and foreign vessels from this protective welfare act, it could very simply have so stated.

Through the years following the conflict of World War I, alien seamen have pursued their calling from our shores and many who served valiantly in World War I did likewise in the recent conflict. Following the legislative history of shipping since 1920, we find Congress, still reiterating its declared intent of 1914, enacting the Merchant Marine Act of 1928 to encourage private ownership of the government's fleet by a mail subsidy plan to cover their higher opera-

tional differential to that of the foreign operator. During the early part of the 1930s this nation had developed a sizeable trained seafaring people of its own and maritime labor organized into trade unions.

In 1936, reiterating its previous declarations of intent, and with pressures from organized maritime labor because of the unhealthy economic situation in the industry, Congress enacted its first legislation restricting alien merchant seamen for the manning of our vessels to 25% of the crew, exclusive of the licensed personnel (46 U. S. Code Sec. 672a). On vessels owned and operated for the government's account, alien seamen thereon were limited to those provided in Sec. 1132, U. S. Code Title 46, known as the Merchant Marine Act of 1936, subject to suspension thereof by the President in the event of a national emergency.

When the tempo of shipping increased in the early forties, prior to our entry into the last conflict, shipping pools were set up for the recruitment of merchant seamen to man our ships. This nation, in its vast set-up, used vessels of every flag and seamen of every nationality who could be depended upon for their loyalty. These seamen were not kept ashore until a vessel chancing to fly the flag of his nationality appeared with a vacancy on board, but they were shipped in chronological rotation upon vessels of many flags. The crews, as in the first war, were invariably composed of many nationalities. Many were injured, torpedoed and killed in the performance of their tasks and in the tradition of the sea without distinction as to flag of vessel or nationality of the seaman. Indeed, even this government had transferred vessels to the Panamanian and other flags in order to circumvent the restrictive manning statutes respecting government-owned vessels and make the utmost use of alien seamen in our cause. Cf. *Carroll* v. *U. S. and Waterman S.S. Co.*, 1943 A. M. C. 339, where the government-owned steamship the *Gallant Fox* was operated under the Panamanian flag and a seaman, a citizen of Eire, was injured thereon during the last war.

As after the First War, so after this last war, alien seamen have pursued their calling from our shores as permitted by our laws and, with the economic depression in shipping, which follows every war, they seek employment, true to their lot and calling, upon anything that floats in order to have some sort of shelter and food.

During and since the past war, tremendous transfers of registry to foreign flags have been resorted to by American citizens in efforts to escape taxes and to evade the safety, welfare and wage laws of this nation. On the other hand, many foreign nationals enter this country with six months business visas, renewable each six months, and for the same purposes organize Panamanian corporations, contract with an operator to operate their foreign flagged vessels for them as "agents", hire and fire their crews within our ports and, when a seaman becomes injured turn him ashore in our land helpless and broken unless he agrees to accept the mere pittance provided by the laws of the country whose flag the vessel chanced to fly. Keen competition among the governments of Panama, Honduras, Nicaragua and Liberia exists in their endeavors to attract shipowners to use their respective flags. Latest, to join the ranks, is Morocco.

Petter D. Pedersen, one of amici curiae herein, is one of many illustrations. He is a Norwegian seaman, 20 years old who, in the port of New York on February 20, 1951, was hired and engaged to serve as wireless operator on board the steamship *Adriatica* flying the Greek flag for $200 per month. This vessel, as indicated in Lloyds Register of Shipping, is listed as being owned by one A. P. Anastassatos, a Greek subject, residing in New York and operating this vessel from an office located in 80 Broad Street, New York City.

The *Adriatica* is a former American vessel, of the Lake type built back in 1919, declared obsolete for our merchant marine, and approved by the Maritime Commission for transfer and sale to foreign interests and registry which came to pass.

Pedersen joined the vessel in the United States, sailed with her until December 28, 1951 when he was discharged in Baltimore and shortly thereafter entered the U. S. Marine Hospital where he now remains receiving treatment for moderately advanced pulmonary tuberculosis which he developed on the *Adriatica* because of unhealthy conditions far below American standards.

Her crew was composed of men of many different nationalities with no common tongue among them. Nor did Pedersen know anything about the Greek language. Unlike American ships, this vessel had no formal articles of agreement. Though engaged in commerce between the United States and foreign countries, her cargoes were, and this very day are, solicited in the United States; her freights are payable in American currency in the United States and everything in connection with her operations originates in the United States, including recruitment of her crews.

Under the Commercial Law of Greece, the nation whose flag the *Adriatica* flies, this sailor would be entitled to receive four months wages plus his medical expense and lodging for a maximum of four months duration. He has been an in-patient at the U. S. Marine Hospital for ten months at this writing. To apply the law of the flag, as this appellant would have this Court do, would have the effect of dismissing this alien seaman from the hospital after four months had elapsed even though he required medical care, with no recourse.

Carlos Murillo, another of amici curiae, was a Honduran seaman who, in the port of New York, was engaged to serve on board the steamship *Norlandia*, flying the *Honduran* flag, as a fireman at 36 *British* Pounds Sterling per month. Lloyds Register of Shipping indicated the registry of title to this vessel in the name of one Silet Cia de Vapores, S.A. of *Panama*. The parties in interest, controlling Silet Cia de Vapores were *Greek* nationals who, after the conclusion of the late war, entered this country on six month business visas, renewable from time to time and who reside in the State of New York. To further confound the situa-

tion, the Articles of Agreement between the Master and crew were written in *English* and provided that only *American* holidays, while the vessel was in port, would be considered as legal non-working days and that insofar as the owners' (an ostensible Panamanian corporation) liability "as regards treatment, maintenance and compensation" was concerned, the same "is to be settled in accordance with the provisions of the *Greek Merchant Shipping Law*". Though this vessel flew the Honduran flag, of a crew of 31 men only two of them, Murillo and one other, were Honduran subjects. Her crew was a conglomeration of Greek, Turkish, Uruguayan, Belgian, Ecuadorian, Portuguese, Egyptian, Colombian, West Indian and Syrian nationals all of whom were recruited in the United States and who signed articles in the Port of Philadelphia. The log books of the vessel were kept in the *Greek* language though it flew the *Honduran* flag.

Murillo was injured on board this vessel while she was in a port of Brazil and returned with the vessel to Philadelphia where he, and other members of the crew were paid off. Suit was commenced in the Southern District of New York (*Murillo* v. *Silet, etc.* Civ. No. 66-359) and the defendants, as a defense, pleaded the *Greek law* and, in the alternative; the law of the flag, *Honduras*. This cause was tried immediately previous to the case now before this Court by the same Judge with a jury who struck the defenses of *Greek or Honduran law* and applied the Jones Act and general maritime law.

Cecil Lazarus, of amici curiae, a national of *Trinidad, B. W. I.*, was engaged in the City of New York on May 24, 1949 to serve on board the steamship *Sandwich* flying the *Panamanian* flag as an able-seaman at $90 per month (American), joining the vessel at New York. Lloyds Register of Shipping indicated this vessel's title as being registered in the name of one Cia Aviade Vapores, S.A. of *Panama*. Lazarus was hired by one International Maritime Corp., a domestic corporation of the State of New

York, who contended that they acted merely as "agents" for Cia Avia de Vapores, S.A.. . Investigation revealed that the stock of both companies was held by American citizens and principally controlled by one John Tyreas, an American citizen, who actually did the hiring, firing and operating of this vessel from our shores in competition with American shipping.

In the port of Pensacola, Florida, Lazarus was injured on board the vessel while performing his duties. He was carried to sea despite his injuries and sent to a clinic in Cuba for examination. He was compelled to stay with the vessel and perform his duties with the result that when the vessel reached Baltimore his condition had become worsened and because of his weakened condition and lameness, he sustained further injury so that he had to be hospitalized in that port, and was paid off from the vessel.

Like the previous situations, this vessel was crewed with a conglomeration of different nationals who were hired in the United States. Her articles were in *English* and provided therein that in the event of illness or injury the crewmembers agreed to be governed by the law of the *Republic of Panama.* As is customarily the case, the crew of many tongues did not know what they were signing when they signed the Articles.

Thus, at 52 Broadway in the City of New York, is an American partnership named Simpson, Spence & Young. This firm are ostensible "agents" and actually operate many foreign flagged vessels, for the accounts of their owners, in competition with American facilities. On the tenth floor of this building, will be found tiny cubby-hole offices, in rows, with no identifications upon the doors. Behind the doors, sit the real parties interested in these foreign flagged vessels all neatly residing in New York by virtue of business visas. They set up no operating staff but make use of the very efficient operations, accounting, payroll and seamen's employment staffs of Simpson, Spence

& Young to whom they pay a fee for such services and space. Their cargoes are solicited and their freights are paid within the United States. Their bank accounts are maintained in the United States. To procure a foreign flag, one need not go to the country whose flag is desired. That is simply a "fee matter" handled by the Consulate of the country whose flag is desired and is accomplished without leaving the City of New York. Similar domestic firms, such as Orion Shipping & Trading Corp. of 80 Broad Street, New York City; Caras (U. S. A.) Ltd. of 27 West Street, New York City; North Atlantic Shipping & Trading Co. of 52 Broadway, New York City and Mar-Trade Corp. of 44 Whitehall Street, New York City operate in similar fashion.

Of these, Simpson, Spence & Young, conservatively speaking, handle about 100 of such foreign flagged vessels, while Orion Shipping & Trading Corp. handle about 150 in competition with American shipping.

In the instant case before the Court, the appellant is in no better position than those illustrated. If anything, he is in worse position.

Thus, in *Grace Line—West Coast Pooling Agreement*, reported in *1940 A. M. C. 1515* wherein counsel for the appellant herein, represented the Lauritzen interests there, we find the modus operandi of Lauritzen which continues to this very day. There we find *West Coast Line* to be a *joint operation* by West Coast Line, Inc., Wessel-Duval & Co., Inc., both domestic corporations, and J. Lauritzen, the appellant. All vessels in the service of West Coast Line were Danish vessels supplied by Lauritzen. In *Shipping Digest*, a national shipping weekly we find "West Coast Line" Advertising itself as carrying on a "regular and direct service *from*" ports of the United States "to the Canal Zone" and ports on the West coast of South America *since 1825* (Exhibit 1). An examination of Lloyds Register of Shipping and the American Bureau of Shipping Register fails to reveal any vessels owned by West Coast Line or West Coast Line, Inc. either currently, in 1946 when appellee was injured, or in 1940. From the

New York *Journal of Commerce* under date of July 22, 1946, immediately prior to plaintiff-appellee joining the *Randa* we find West Coast Line advertising its direct service from New York to the west coast of South America listing the vessels used by it for such service, with their sailing dates (Exhibit 2). An examination of Lloyds Register of Shipping for 1946, as well as today, reveals that beside the *Randa*, all of the other vessels, scheduled by West Coast Line in this service, are registered in the name of J. Lauritzen and fly the Danish flag.

Indeed, Wessel-Duval & Co., Inc., West Coast Line, Inc. and Lauritzen maintain common offices in New York City. An examination of the 1952-53 New York Telephone Directory reveals:

Wessel Duval & Co., Inc.—67 Broad Street—WHitehall 3-9600
J. Lauritzen, agency—67 Broad St.—WHitehall 3-9600
West Coast Line, Inc.
Main Office—67 Broad St.—WHitehall 3-9600
Maintenance Dept.—90 Broad St.—WHitehall 4-4513
J. Lauritzen, Inc.—90 Broad Street—WHitehall 4-4153

In short, West Coast Line, Wessel-Duval & Co., both domestic companies and J. Lauritzen have maintained for many years a joint venture in the United States, with Lauritzen supplying the vessels, in a regular scheduled trade route from the United States to the West Coast of South America (Exhibit 3). This operation has, and continues to be, run in competition with an old American steamship operator, the Grace Line, Inc. who uses American flagged vessels and who, in order to maintain its operation on this route must be, and is, subsidized by the United States Government, at the expense of the American taxpayer, because of the higher operating cost differential of its American flagged vessels.

The general words of the Jones Act, selected by the Congress, were wisely chosen with a great deal of foresight consonant with its oft-repeated declaration of intent of creating, fostering and building an American merchant marine so that never again, as in 1914, would this nation be left without adequate means of transportation when foreigners decided to withdraw their vessels from our harbors and the market.

For, as the Foreign Trade Division of the United States Bureau of Census records reveal, from 1900 until our plight of 1914 occasioned by the withdrawal of foreign tonnage from our ports, our imports and exports were carried by 78% foreign bottoms, as compared with 22% in American bottoms. By 1920, with government military cargoes and government owned vessels, we were transporting 51% of our own commodities and, in the years following, until 1940, we find a gradual decline to 26% bringing us back to conditions approximating pre-World War I. Even in 1943, 51% of our materials was being carried in foreign bottoms and not until 1945 did we reach the peak of 65% being carried in American flagged vessels. By 1949, we had again declined to 48% and the latest figure released for 1951 reveals that we had dropped to 41% and, at this writing, were it not for the Korean situation, American shipping would be worse off than it was in 1914.

A casual glance through any current newspaper's marine data section, or the Journal of Commerce, will reveal that insofar as American flagged shipping is concerned a famine exists and that what cargo exists, other than government cargo, is being carried in foreign bottoms. The daily entries and clearances from such journals will reveal them to be preponderantly foreign flagged vessels.

The foregoing material is illustrative and is factually based upon public documents and records, the writer's personal experience at sea since 1924 in every capacity from messboy to master, and as operations manager and owner/operator ashore. It is also based upon samplings of actual

cases of alien seamen, as illustrated, and personal investigation by the writer whose seamen's matters handled by him consist of virtually 85% alien seamen. Those illustrated are merely indicative of thousands of like circumstances.

That Congress, in enacting the Jones Act, intended thereby to exempt from its obligations foreign vessels and operators using our ports as bases of competitive operations with our own hard built American fleet and thereby confer upon them a distinct competitive advantage in operational costs, at the expense of the American vessel and taxpayer, would be a conclusion repugnant to Congress's oft-repeated declaration of intent and without foundation in the statute either actual or implied.

Nor is it conceivable that Congress, at a time when a tremendous number of alien seamen were aiding in the manning of our ships during the first War, when the Act was before it, and who, by tradition and custom would be pursuing their callings and engaged from our shores at the close of that war and thereafter, intended to exclude alien seamen from the Act's benevolent protection.

CONCLUSION

The decision and judgment of the United States Court of Appeals for the Second Circuit should be affirmed in all respects.

Dated, New York, N. Y.
November 24, 1952.

Respectfully submitted,

HARRY D. GRAHAM,
Counsel for Amici Curiae.

Exhibit 1

SHIPPING DIGEST
November 17, 1952
(Page 58)

WEST COAST LINE
U. S. A. to West Coast of South America
Since 1825

Regular Direct Service From
NEW YORK — PHILADELPHIA — BALTIMORE
Regular Direct Service From
NEW ORLEANS — GULF PORTS
to
CANAL ZONE, PANAMA, COLOMBIA, ECUADOR, PERU,
BOLIVIA and CHILE

WEST COAST LINE, INC.

67 Broad Street
New York 4, N. Y.
WHitehall 3-9600

309 Carondelet Bldg.
New Orleans, La.

Exhibit 2

THE JOURNAL OF COMMERCE
and Commercial
New York, Monday, July 22, 1946
(Page 20)

WEST COAST LINE, INC.

Direct Service to

COLOMBIA, ECUADOR, PERU, CHILE

	Sails
S.S. Randa	July 24
S.S. Lotta Dan	Aug. 10
S.S. Karla Dan	Aug. 27
S.S. Laila Dan	Sept. 11

Loading berth Pier 46, New York Docks, Brooklyn.

Calling direct at Buenaventura, Guayaquil, Pimentel, Callao, Mollendo, Antofagasta, Valparaiso, and other ports as cargo offers.

For information apply

WEST COAST LINE, INC.

67 BROAD STREET, NEW YORK — DIGBY 4-9600

Exhibit 3

JOURNAL OF COMMERCE

New York, Friday, September 5, 1952

(Page 20)

WEST COAST LINE

Direct Service to

CANAL ZONE, PANAMA, COLOMBIA, ECUADOR, PERU, BOLIVIA and CHILE

Loading Berth: Pier 4, New York Docks, Brooklyn

Bella Dan ..... New York, Sept. 17
(B. Knudsen)
Baltimore, Sept. 5
Philadelphia, Sept. 8

Cristobal (Colon), Balboa (Panama City), Buenaventura, Guayaquil, Paita, Pimentel, Callao, Mollendo, Arica, Antofagasta, Valparaiso.

Greta Dan ..... New York, Oct. 1
(C. Nielsen)
Baltimore, Sept. 22
Philadelphia, Sept. 23

Cristobal (Colon), Balboa (Panama City), Buenaventura, Guayaquil, Pimentel, Callao, Mollendo, Arica, Antofagasta, Valparaiso.

Paula Dan ..... New York, Oct. 15
(A. Roesen)
Boston, Sept. 26
Baltimore, Oct. 6
Philadelphia, Oct. 7

Cristobal (Colon), Balboa (Panama City), Buenaventura, Guayaquil, Pimentel, Callao, Mollendo, Arica, Antofagasta, Valparaiso.

From Gulf Ports

Tessa Dan.....New Orleans, Sept. 18
Mobile, Sept. 9
Galveston, Sept. 11
Houston, Sept. 12

Cristobal (Colon), Balboa (Panama City), Buenaventura, Guayaquil, Paita, Callao, Mollendo, Arica, Antofagasta, Valparaiso, Talcabuano.

Vilma Dan.....New Orleans, Oct. 3
Mobile, Sept. 25
Galveston, Sept. 27
Houston, Sept. 29

Cristobal (Colon), Balboa (Panama City), Buenaventura, Guayaquil, Callao, Mollendo, Arica, Antofagasta, Valparaiso, Talcabuano.

For information apply

WEST COAST LINE, INC.

67 Broad Street, New York WHitehall 3-9600
309 Carondelet Bldg., New Orleans Tulane 6751

Agents

Philadelphia	Stockard & Co., Inc.
Baltimore	Stockard & Co., Inc.
Chicago	Kerr Steamship Co., Inc.
St. Louis	Kerr Steamship Co., Inc.
Detroit	Kerr Steamship Co., Inc.
Montreal	Kerr Steamship Co., Inc.
Milwaukee	General Steamship Agencies, Inc.
New Haven	Roger Neidlinger
Memphis	Biehl & Co.
Mobile	Page & Jones
Galveston	Thomas Rice & Co.
Houston	Thomas Rice & Co.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,
Petitioner,

v.

EVALD JOHANN LARSEN,
Plaintiff-Respondent,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF SKIBSFARTEN'S ARBEIDSGIVERFORENING AS AMICUS CURIAE

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Counsel for Skibsfartens Arbeidsgiverforening

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BRIEF OF SKIBSFARTENS ARBEIDSGIVERFORENING AS AMICUS CURIAE

Skibsfartens Arbeidsgiverforening having obtained and filed written consent of counsel for the petitioner and of counsel for the respondent, respectfully submits this brief as amicus curiae.

Jurisdiction

The final judgment of the United States Court of Appeals for the Second Circuit was entered on May 2, 1952 (R. 129-130). A petition for a writ of certiorari was filed July 25, 1952, and was granted October 13, 1952 (R. 132). The jurisdiction of this court to grant a writ of certiorari is conferred by Title 28 United States Code, Section 1254.

Statement of Facts

The respondent, Evald Johann Larsen, a citizen and resident of Denmark, commenced this action in the United States District Court for the Southern District of New York on May 6, 1947 (R. 3) to recover for personal injuries incurred on board the ~~respondent's~~ petitioner's vessel, the S. S. RANDA on October 7, 1946 in Havana, Cuba (R. 26, 27, 33-34). A jury returned a verdict in favor of respondent finding that his injury was caused by the negligence of petitioner (R. 115-116). Judgment was entered on this verdict by the District Court (R. 120) and was affirmed by the United States Court of Appeals for the Second Circuit, per curiam, on the authority of *Kyriakos* v. *Goulandris*, 151 F. 2d. 132 (CCA 2, 1945); *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597 (CCA 2, 1950), cert. den., 341 U. S. 915 (1951), (R. 127-128).

The S. S. RANDA is registered under the Danish flag and the petitioner, its owner, is a Danish citizen (R. 16, 45). At the time of the injury respondent was employed by petitioner as a seaman on the S. S. RANDA under Articles calling for a voyage to "South America and other places" (R. 16, 44-46). These Articles were signed in New York City and provided in part that petitioner's employment was "on the basis of the regulations contained in the (Danish) Seaman's Law" (R. 45). Following his injury the respondent was hospitalized in Havana and then in New York at petitioner's expense (R. 16, 49). Following discharge from the hospital respondent received, also at petitioner's expense, out-patient treatment in New York until January 9, 1947 at which time he was declared fit for duty (R. 40, 41). In addition to the foregoing, respondent also received wages due to the date of the accident, seven days additional wages due under Danish Law, and maintenance and subsistence from December 10, 1946 until December 30, 1946 while an out-patient in New York (R. 16, 39, 40, 90-92). The respondent was also offered free transportation to Denmark for further treatment but this was refused (R. 50).

Interest of Skibsfartens Arbeidsgiverforening

Skibsfartens Arbeidsgiverforening is an association of Norwegian shipping companies engaged in ocean commerce throughout the world. Its home office is in Oslo, Norway. Its several hundred members include practically all the Norwegian companies who own ships trading in foreign commerce.

The association is interested in this case because its members annually employ a very large number of Norwegian seamen on board Norwegian flag vessels which engage in trade to and from the United States. In the course of this trade a substantial number of Norwegian seamen sign Articles in the United States for employment on the vessels of its members.

There is a complete system of law governing the relations between Norwegian shipping companies and the Norwegian seamen they employ on their vessels. The business policies of these companies are formulated on the assumption that the internal relations of the companies and their employees will be determined on the basis of the scheme of rights and duties established under prevailing Norwegian law. If the decision of the court below is affirmed the effect will be to interfere with the internal relations of Norwegian shipping companies and their employees who sign Articles in the United States for service on Norwegian flag vessels.

Argument

It has long been a settled principle of the general maritime law that where an action sounds in tort and the tort occurs on board a ship, the law of the flag of the vessel governs. If the action sounds in contract and concerns a matter relating solely to the internal economy and discipline of the vessel, the law of the flag of the vessel also governs. *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597 (CCA 2, 1950); *O'Neill* v. *Cunard White Star Limited*, 160 F. 2d 446 (CCA 2, 1947); *Kyriakos* v. *Goulandris*, 151 F.

2d 132 (CCA 2, 1945). It is well settled that a suit of this type concerns the internal economy and discipline of the vessel, *Kyriakos* v. *Goulandris, supra,* p. 139, 140; *Thompson Towing and Wrecking Assn.* v. *McGregor,* 207 F. 209 (CCA 6, 1913). Thus in the instant case under established rules governing choice of law Danish law would apply regardless of whether the suit be regarded as sounding in contract or in tort.

The question, of course, is whether the Jones Act[1] should be construed to nullify this long established principle of the general maritime law. Certainly the Act should not be so construed unless required by either its plain meaning or by over-riding considerations of policy. The Act does not in terms apply to the instant case, and it is questionable, to say the least, whether the entire scheme of the Act requires that it be applied here. (See Point I of petitioner's brief.) The question then is whether over-riding considerations of policy demand application of the Act. Only two policy considerations have been advanced in support of its application to the situation here presented.

(1) In the *Kyriakos* and *Taylor* cases it was stated that application of the Jones Act to all seamen who sign articles in the United States was necessary to enable American seamen to compete on equal terms with foreign seamen for jobs on foreign vessels. Unless, it was said, foreign seamen could avail themselves of the benefits of the Jones Act American seamen would never be employed on foreign vessels. *Kyriakos* v. *Goulandris, supra,* p. 137; *Taylor* v. *Atlantic Maritime Co., supra,* p. 600. As a practical matter there is no need for the Court of Appeals for the Second Circuit to be concerned with the preservation of the competitive position of American seamen with respect to employment on foreign vessels. There are very few American seamen who would be willing to serve at the lower pay

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[1] Section 33 of the Merchant Marine Act of June 5, 1920, c. 250, 41 Stat. 1007; Title 46, United States Code, § 688.

scales, as measured in dollars, available on foreign vessels. (See *O'Neill* v. *Cunard White Star, Ltd., supra,* p. 448.) American seamen, of course, would not have the benefit of the lower Norwegian living costs and would not be attracted by the Kroner benefits available to Norwegian seamen in Norway. Consequently preservation of the American seamen's competitive position concerning employment on foreign flag vessel is not a consideration of policy of sufficient weight to warrant application of the Jones Act solely because Articles were signed in the United States.

(2) The only other policy consideration advanced to justify extending the Jones Act in this situation is that it is necessary to enable the American Merchant Marine to successfully compete against foreign shipping. (See Point I of Brief of Amici Curiae on behalf of Petter D. Pedersen et al.) First, petitioner's brief points out that this consideration is in conflict with the policy of the United States not to afford secret subsidies (see Point I, pp. 24, 25 of petitioner's brief), and, second, it relates to a matter within the province of the legislature, not the judiciary.

Not only are there no policy reasons in favor of extending the application of the Jones Act in this case but there are strong reasons of policy against extending it. Many maritime nations of the world have provided extensive remedies to seamen injured in the course of their employment. Norway has long been one of the leaders in enacting social legislation of this sort. Norwegian seamen employed on Norwegian vessels are afforded a complete scheme of remedies. Under Norwegian law a Norwegian seaman is entitled to the following remedies:

1) Hospitalization, medical care without cost to the seaman, board and lodging during the period of convalescence until declared fit for duty.

2) Support for his family or dependents during the same period when signed off a Norwegian ship because of disability.

3) Repatriation and wages during the period of disability limited, to two months' wages for officers and one month's wages for others.

4) Compensation from the national insurance funds corresponding to the percentage of disability if the disability is caused by an injury and is lasting. The purpose of this insurance is to compensate the seaman for his financial losses and is similar to Workmen's Compensation Acts enacted in various states of the United States. The measure of compensation is, of course, determined by the cost of living in Norway. Although the Norwegian people enjoy one of the highest standards of living in the world, the cost of living is low when measured in United States currency.

5) In case of death the widow and minor children or other dependents will receive a pension.

Furthermore, under Norwegian law a seaman cannot sign away the above listed rights. Norwegian law also provides in substance that if it is necessary to leave a sick or injured seaman behind abroad, it is the duty of the ship's Master to hand him over to the care of the nearest Norwegian Counsel and to guarantee all expenses for the proper treatment of the seaman. It is also the duty of the Master to submit to the Consul all information pertaining to the case. The Consul takes care of the seaman in accordance with regulations, satisfies himself that he receives the necessary medical treatment and is granted all the rights to which he and his family are entitled.

The expenses of the national insurance plan for seaman outlined above is partly paid direct by the owner of the ship the seaman signed off, partly by national insurance funds. Contributions to the national insurance funds are required of all Norwegian ship-owners, depending upon the number of seamen employed and the tonnage of the ship.

Seamen who sign on Norwegian ships all over the world agree in their standard articles to serve under and to be bound by agreements obtained by nationally sanctioned collective bargaining and the provisions of Norwegian law. The articles cover the entire agreement between the seamen and the ship-owner. (Law respecting Seamen of February 16, 1923 No. 1 as amended; Law Concerning Insurance Against Disease of June 6th, 1930 No. 18 as amended; Law Relating to the Insurance of Seamen Against Accidents of June 24th, No. 11 as amended; Law Relating to Seamen's Pension of December 3, 1948, No. 7.)

If the decision of the Court of Appeals in this case is affirmed Norwegian seamen who sign on Norwegian ships in the United States will have access to a scheme of remedies wholly distinct from the foregoing which still govern rights of all other Norwegian seamen. Clearly, the intention to interfere with the internal affairs of foreign nationals should not be attributed to Congress without a clearer expression than is found in the Jones Act.

There remains one further matter. Counsel for respondent has implied that many foreign shipping companies are, in reality as much a part of the American shipping trade as if they were, in fact, American companies. (See Respondent's brief in reply to petition for writ of certiorari, pp. 4 through 7). First, that brief purports to make a number of statements of fact with respect to the conduct of foreign shipowners in connection with the calling of their vessels at American ports. There is no evidence in the record in this case one way or the other on any such points. Second, the implications which counsel for respondent apparently sought to create are misleading, at least with respect to Norwegian shipping companies, because under Norwegian law only Norwegian citizens or Norwegian companies having their head offices in Norway and controlled by Norwegian citizens can own and operate Norwegian ships. (Maritime Law of July 20, 1893, most recent am'd. December 3, 1948.)

Conclusion

It is respectfully submitted that the judgment of the Court of Appeals should be reversed because, in the opinion of the undersigned, there is no justification for construing the Jones Act so as to interfere with the internal affairs of foreign nationals where the only contact with the United States is the place of signing Articles.

Respectfully submitted,

SKIBSFARTENS ARBEIDSGIVERFORENING

By JAMES S. HEMINGWAY

JAMES S. HEMINGWAY

Counsel for Skibsfartens Arbeidsgiverforening

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Plaintiff-Respondent.

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BRIEF OF *AMICI CURIAE* ON BEHALF OF THE "FRIENDS OF ANDREW FURUSETH LEGISLATIVE ASSOCIATION", AND CONSENT TO FILE BRIEF.

SILAS BLAKE AXTELL,
Counsel for *Amici Curiae*.

DAVID D. ERROLL,
of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Preliminary Statement

The case at bar presents only one question: the extent of the coverage of Section 33 of the Merchant Marine Act of June 5, 1920, 41 Stat. 1007, Title 46, United States Code Section 688, known as the Jones Act.

The Jones Act has thus been on the books since 1920. Its constitutionality has not been questioned since *Panama R. R. Co.* v. *Johnson*, 1924, 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748. The admiralty courts of the United States have heretofore handed down innumerable decisions interpreting the scope and effect which Congress had intended to give to this statute. In litigation concerning claims of alien seamen against alien shipowners a weight of authority has been accumulated in a line of consistent

decisions by the federal courts, based upon sound, conservative legal doctrines.

Stewart v. *Pacific Steam Navigation Co.*, 1924, 3 F. 2d 329, at law 1950 A. M. C. 147;
Arthur v. *Compagnie Generale Transatlantique*, 1934, 72 F. 2d 662 (C. C. A. 5th);
Gambera v. *Bergoty*, 132 F. 2d 414, cert. denied in 319 U. S. 742;
Kyriakos v. *Goulandris*, 1945, 151 F. 2d 132 (C. C. A. 2nd);
Taylor v. *Atlantic Maritime Co.*, 1950, 179 F. 2d 597, cert. denied in 341 U. S. 915;
Larsen v. *Lauritzen*, 1952, 196 F. 2d 220 (at bar).

While the federal courts are in agreement, the only discordant note can be found in *Sonnesen* v. *Panama Transport Company*, 1948, 298 N. Y. 268, cert. denied in 337 U. S. 919, handed down by the New York Court of Appeals. Point IV below demonstrates why the *Sonnesen* case is unconvincing.

We are now told by the petitioner herein that the accumulation of the weight of authority cited above is merely the result of a perpetual comedy of errors; that on one cardinal point at least the admiralty courts of the United States have during all these years misread, misunderstood, and misapplied the Jones Act; and that the Supreme Court of the United States should reverse this line of decisions representing the weight of authority in the federal courts, in order to establish that, in its opinion, in creating the Jones Act, Congress had the intention to make a law which would abolish the requirement of uniformity in maritime legislation, and which would exempt alien shipowners, whose offices are lining Wall Street, from the operation of American laws and from the enforcement of American public policy. Can any court of the United States have more than one answer to this singular proposition?

All those whose vital interests are at stake in this case, but primarily the world community of seamen, will no doubt welcome the grant of a writ of certiorari in the instant case. In fact, a clear and authoritative adjudication by the highest tribunal is needed in order to remove for all time the wasteful complexity of unnecessary pleas to jurisdiction, and in order to make seamen in general, and particularly seamen in distress safe from Danish interpretations of American laws.

Since, in its vast array of argument and citations, petitioner herein has failed to assign a single ground of any legal validity, even remotely sufficient to show why the federal statute should not apply to the case at bar, it is respectfully submitted that the existing weight of authority represents the true and correct interpretation of the legislative intent behind the Jones Act; that this weight of authority should not be disturbed; that the Supreme Court of the United States should remove the point at issue from the realm of controversy; and that the judgment of the United States Court of Appeals for the Second Circuit, entered in this case May 2, 1952, should be affirmed.

POINT I

Petitioner's contention that the Jones Act is not applicable and was not intended by Congress to be made applicable to foreign seamen on foreign ships is in conflict with the unanimous opinion of the federal courts and with the rules of statutory construction.

Petitioner contends, in substance, that the Jones Act is not applicable to foreign vessels or foreign seamen, because it contains no specific provision for the express inclusion of foreign vessels or foreign seamen within the orbit of its operation.

It is submitted that this contention is without merit. In the first place, the Jones Act is a remedial statute and should therefore be liberally construed, whereas petitioner's thesis implies that the interpretation should be "*strictissimi juris*". And even "*strictissimi juris*" does not mean that "all" requires additional description in order to mean "everybody". On this point, Mr. Justice Holmes' admonition in *Gompers* v. *United States*, 233 U. S. 604, 610, seems to provide the true approach:

> "* * * the provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital, not formal; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth."

Incidentally, when, in *Resigno* v. *Jarka*, 248 N. Y. 225, the Court of Appeals of New York made an attempt to establish a doctrine similar to petitioner's thesis, it was squarely overruled by a unanimous decision of the Supreme Court of the United States in *Uravic* v. *Jarka* (1931), 282 U. S. 234, 51 S. Ct. 111, 75 L. Ed. 312, and the opinion by Mr. Justice Holmes, referring to the Jones Act, states, *i. a.*:

> "The language of the statute is general * * * the question is, why general words should not be generally applied."

Learned Hand, Ch. J., one of the most eminent experts of admiralty law that ever existed, has left no room for doubt in respect of his opinion on the subject.

Time and again, defendant shipowners have attempted to interpose pleas to jurisdiction based on technicalities such as the title of the statute. As a matter of principle

the Supreme Court of the United States decided the question in *Strathern* v. *Dillon,* 252 U. S. 348, 40 S. Ct. 350, 64 L. Ed. 607. In its application to the Jones Act, the matter was disposed of conclusively by Augustus Hand, J., in *Kyriakos* v. *Goulandris,* 1945, 151 F. 2d 132.

Historically, the Congressional record provides ample support for the position adopted by the federal courts. We limit ourselves to just one example. At page 43 of the Congressional Record, October 21, 1913, 63rd Congress, first session, Senator Fletcher (Dem., Florida), one of the supporters of the La Follette Seamen's Act, made the significant statement that one of the three cardinal aims of the Act then under debate was to equalize the cost of operating vessels, foreign and domestic, taking cargo or passengers from ports of the United States.

On the other hand, an attempt to read the Congressional intent behind the Jones Act solely from preceding legislation, which the Jones Act was avowedly intended to amplify, is no guide to its meaning and apt to be misleading. So is petitioner's attempt to find support for its thesis by means of a dissection of the Act of 1915. However painstaking the effort, it only leads to "reasoning by interpolation", and ends in the conclusion that the past was bound to nullify the effects of later enactments.

While no canon of statutory construction can be invoked by petitioner in support of its thesis, there is a final and conclusive argument *in contra.* When a statute is susceptible of two interpretations, one of which is reasonable, and the other absurd, the courts will presume that the legislature intended to give the enactment its reasonable effect. Now, assuming, *arguendo,* that the Jones Act is susceptible of an interpretation other than that hitherto given it by the federal courts, we find that the statute would be absurd, if it were not intended to be applied with uniformity to national and foreigner alike. Surely, Congress

could not have intended to impose a burden upon the American merchant marine, based upon reasons of public policy, while at the same time exempting the foreign shipowners, engaged in competition with American shipping, from the requirements of American public policy sought to be imposed. What would be the reason for such an extravagant and unusual discrimination in favor of the alien? And what claim do the foreign shipowners have to a position of privileged extraterritoriality? Is not equality enough? Would not, in fine, the natural effect of a law so conceived, and applied, end in the destruction of the welfare of those whom Congress had set out to protect?

Fortunately, the federal courts, concerned with the administration of justice according to substance, have had no misgivings as to the Congressional intent, and at the present stage only the final approbatur of the Supreme Court of the United States is needed in order to remove the matter for good from the realm of controversy.

It is surely not too much to say that upon this point the existing weight of authority stands up to every fair and reasonable test.

POINT II

Contrary to petitioner's contention, the fact that recovery is sought for a negligent act committed on the high seas does not remove the case at bar from the operation of the federal statute.

Petitioner's contention boils down to a thesis that if the cause of action sounds in tort, then there is no law to govern it other than the law of *lex loci delicti.* Petitioner does not seem to remember that in its next point it will claim to be bound by the law of the flag, and it provides us with no explanation as to how its first claim can be sustained in the face of the second.

In quoting decisions like *Slater* v. *Mexican National R. R. Co.*, 1903, 194 U. S. 120, 24 S. Ct. 581, 48 L. Ed. 900, petitioner has lost sight of the fundamental distinction between "tort" and "maritime tort". As to the latter, in *Atlantic Transport Co.* v. *Imbrovek*, 1913, 234 U. S. 52, Chief Justice Hughes aptly points out that when courts speak of "locality" in connection with maritime torts, they do not mean Philadelphia or Havana, but that the tort has been committed upon "the high seas or other navigable waters. *The Plymouth*, 3 Wall. 20."

It must be assumed that petitioner does not contend that the Jones Act is not to be applied to torts, *i.e.* negligent acts, committed upon the high seas, although we readily admit that the statute does not mention the word "high seas" any more than it does "foreign ships" or "foreign seamen".

We submit that in the presence of valid legislation such as the Jones Act, the approach must be entirely different. The question is, not what law of what place does apply, but whether the Jones Act applies to the case or not. If the Jones Act does apply, there is no need to go further afield. And, as to the principles governing the applicability of the Jones Act, we submit the following:

The scope and effect of a federal statute depends upon the legislative intent, and upon the jurisdictional and constitutional power of the legislators.

As to the Congressional intent behind the Jones Act, Judge Learned Hand had this to say in *Stewart* v. *Pacific Steam Navigation Co.*, 1924, 3 F. 2d 329, 1950 A. M. C. 147:

> "There is no indication of any purpose to limit it (the Jones Act) to United States corporations, and it would be highly unreasonable to impute such purpose to Congress, for the result would be not only to deprive American seamen of the protection which the act was meant to give them, when serving on for-

eign ships, but to give advantage to such ships as against American ships. We all know that the purpose of Congress was directly the opposite."

And as to the power of Congress to extend the effect of the Jones Act to circumstances such as presented at bar, this Court has held in *Patterson* v. *Bark Eudora*, 1903, 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002:

> "* * * we are of the opinion that it is within the power of Congress to protect all sailors shipping in our ports on vessels engaged in foreign or interstate commerce, whether they belong to citizens of this country or of a foreign nation. * * *"

The application *vel non* of the Jones Act, and for that matter of any statute, depends upon the presence of circumstances which it was intended to cover, known as jurisdictional facts. Where such jurisdictional facts are present, the applicability of the statute cannot be drawn into question. What the requirement as to the jurisdictional facts is to be, may be provided in the law itself, or determined by judicial interpretation. Since, in *Patterson* v. *Bark Eudora* (*supra*), this Court declared the power of Congress to protect "all sailors shipping in our ports", and since, in *Panama* v. *Johnson* (1924), 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748, this Court stated:

> "The statute extends territorially as far as Congress can make it go, and there is nothing in it to cause its operation to be otherwise than uniform."

Nothing could be more logical and consistent with the views manifested by this Court than the rule laid down by the federal admiralty courts that whenever a seaman is signed on within the territorial jurisdiction of the United States, this constitutes the jurisdictional fact which entitles him to claim under the Jones Act, regardless of his

nationality, the nationality of the owner, or the locus of the injury, on the ground that when the contract is entered into in the United States, the statute is read into it as a matter of public policy fixed by the Congressional intent.

Taylor v. *Atlantic Maritime Co.* (1950), 179 F. 2d 597, cert. denied in 341 U. S. 915.

We submit that the question is first of all "does the Jones Act apply to the case?" If yes, all other speculation is idle. Petitioner's argument that the Jones Act applies only in cases where no other law could apply is novel and entirely unwarranted.

POINT III

Petitioner's contention that "accepted law and custom" can or should override a federal statute enacted for the specific purpose of amending the "aceepted law and custom" referred to is without merit.

It can be expected that judicial notice can be taken of so notorious a fact as that the purpose of the Jones Act was to correct the traditional harshness of the common law of the sea, and to supply the deficiencies of former legislation in the field, demonstrated, for example in *Chelentis* v. *Luckenbach*, 1918, 247 U. S. 372, 38 S. Ct. 501; 62 L. Ed. 1171. If Congress had the power to enact it, then it becomes well nigh axiomatic that the statute came into being for the declared and manifest purpose of overriding the former common law of the sea.

It is just as axiomatic that when a valid federal statute, and a common law principle like the rule of the law of the flag are in conflict, there can be no question as to the supremacy of the federal statute, the law of the United States.

No principle of maritime law has any validity unless it is accepted by the United States.

The Lottawanna, 21 Wall. 558, 88 U. S. 558, 22 L. Ed. 654;
The Western Maid, 1922, 257 U. S. 419, 42 S. Ct. 159, 66 L. Ed. 299.

In 1949 Mr. Justice Jackson expressed the same principle in *Farrell* v. *United States*, 336 U. S. 511, 69 S. Ct. 707, 93 L. Ed. 850:

> "The law of the sea is in a peculiar sense an international law, but application of its specific rules depends upon acceptance by the United States."

Assuming then that, as in the case at bar, the jurisdictional facts are present which make the Jones Act applicable, then the seaman claiming thereunder has a right to enforce his claim under the provisions of the federal statute, all Danish laws, and other "accepted laws and customs" to the contrary notwithstanding. The Federal Statute, Jones Act, overrides custom, foreign law and common law. If there remains any confusion on this point, it is because the petitioner seems to be more anxious to get around the law than at the law.

In its Summary of Argument petitioner speaks of "international repercussions". Whether or not this is an attempt to intimidate the courts of the United States is a question which we leave open. We submit, however, that there is no principle of international law which requires a sovereign country to assume ritualistic attitudes of senseless absurdity. Quite especially must the ancient rule of the law of the flag be subjected to careful scrutiny. Firstly, this rule has never been regarded as a "mystic overlaw", and has at all times been subjected to numerous exceptions. *Oppenheim*, International Law, 7th Ed. Vol. I, page 548.

Secondly, matters of internal economy of private merchant vessels have always been within the discretionary jurisdiction of the courts. *Cunard S. S. Co.* v. *Mellon*, 1923, 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894. Thirdly, conditions have changed beyond all recognition. Today foreign registry has often nothing to do with allegiance to a foreign sovereign whose symbol is the flag. Today foreign registry is being resorted to on an unprecedented scale by private shipowners as a device providing immunity from American taxes, from American safety laws, American wage standards, etc. The latest figures published by the U. S. Coast Guard, indicate that as of December 31, 1951, Panama, Liberia and Honduras had the following tonnage in their respective registries:

Panama	545 ships	5,386,000 DWT
Liberia	78 "	1,167,000 DWT
Honduras	79 "	576,000 DWT

In accordance with data published in *Fortune*, Vol. XLI, No. 5, May, 1950, at pages 51, 56 and 58, there have been in the period 1945-1949 altogether 405 transfers of American-built and American-owned ships to Panamanian registry. According to the same source, the wage differential alone yielded a saving of up to 25%. Shall these operators, hiding behind a foreign flag, be permitted to invoke before the American courts the immunities which they claim this flag should give them? Not only is there no valid reason why the courts of the United States should not take cognizance of the new conditions, but, on the contrary, in full accord with the traditional principle of international law "*de rebus sic stantibus*", there is every reason to approach a new situation in a new and more appropriate manner. *Oppenheim, International Law*, 7th Ed., Vol. 1, pages 844, *et seq.* To continue to apply the rule of the law of the flag mechanically would be to rest on an outdated formula at the expense of a vital national interest.

Petitioner can advance no doctrine which would require the United States courts to let it override federal statutory law.

POINT IV

An analysis of the *Sonnesen* case demonstrates that it was rested upon authorities which do not support the decision. Consequently the *Sonnesen* case cannot be relied upon as convincing authority.

As a preliminary to the analysis of *Sonnesen* v. *Panama Transport Co.*, 1949, 298 N. Y. 262, cert. denied 337 U. S. 919, we quote the following from a brief by Arnold W. Knauth, Esq., eminent admiralty lawyer and editor of "*Benedict on Admiralty*" and "*American Maritime Cases*", submitted in opposition to application for writ of certiorari in *Taylor* v. *Atlantic Maritime Co.*:

> "Petitioner relies chiefly on
>
> *Sonnesen* v. *Panama Transport Co.* (1949), 298 N. Y. 268, 82 N. E. 2d 569, certiorari denied, 337 U. S. 919.
>
> "It mentions that case three times, with heavy emphasis. Unless we are impressed by that State Court case, the rest of the petition is of no particular federal interest.
>
> "First we note that counsel for the employer in the *Sonnesen* case are also counsel for the employer in this *Taylor* case. They urge that the federal and admiralty court should follow a pattern set by a single and commonlaw State.
>
> "Next we note the astonishing fact that neither counsel in the *Sonnesen* case briefed or appealed on the question of jurisdiction as to alien seamen in alien ships. The arguments are well summarized in the

State Reporter, 298 N. Y. at 263-265. An inspection of the actual briefs shows that the Reporter's summaries are full and fair. So we discover that the New York State Court of Appeals decided the *Sonnesen* case on a point not briefed. In particular the employer, Panama Transport Co., a Panama company operating its ships under the Panama flag, did not challenge the jurisdiction of the State Court nor question the application of the Jones-FELA Act. It made only these four points: I. The Appellate Division had power to review the question and correctly dismissed the complaint for failure to prove a cause of action 'under any law'; II. The Appellate Division had power to set aside the verdict as against the weight of evidence; III. Plaintiff had failed to prove neglect in medical care; IV. Plaintiff had not proved any right to future maintenance.

"Now this Panama Transport Co. is well known to be an affiliate of the Standard Oil Co. of New Jersey. It was first formed to enable Standard Oil to operate tankers to England and France in open circumvention of our Neutrality Law in 1939 and 1940. The Panama flag was not affected by the U. S. Neutrality Law.

Some years before, the case of

> *Gerradin* v. *United Fruit Co.* (E. D. N. Y., 1931), 51 F. 2d 417; 1931 A. M. C. 1425; affirmed (C. C. A. 2d, 1932) 60 F. 2d 927; 1933 A. M. C. 81, certiorari denied, 287 U. S. 642,

had established that Americans who operated their boats under the flag of Honduras would have to apply the Jones-FELA Act to their relations with their seamen. The Standard Oil Co. did not propose to stand before the world as seeking to evade our seamen's laws when they put their tankers under the flag of Panama; they were merely getting around the

Neutrality Act. They were not trying to upset their general labor relations applicable to their great fleet of tankers. In fact, a search of the reported cases concerning the Panama Transport Co. as a litigant does not reveal any instance where that company—through the same counsel who present the petition for the Atlantic Maritime Co. here—urged the idea that the Jones Act does not apply to its Panama-flag seamen. It has litigated Jones Act cases without raising that point. See, for instance,

Anderson v. *Panama Transp. Co.* (S. D. N. Y., 1942), 1942 A. M. C. 43 and 744 (neither elsewhere reported).

"Of course the Jones Act applies to Panama Transport ships; the Company and its seamen would not have it otherwise. So we find the curious fact that the New York Court seized upon the point of jurisdiction and applicability to toss out the case, although neither party raised these questions, and it was an undesirable disturbance of the employer company's policy. In effect the *Sonnesen* case merely says that the Courts of New York State will not lend themselves to effectuating the Standard Oil Company's sound labor relations policy in dealing with its sick and injured seamen, under the federal Jones-FELA Act. Fortunately the federal courts are equally open in FELA cases, and in that field do not have to pay regard to the narrow and restrictive views of the State Court. It may be unwise and unfortunate for New York to close its state courts to these cases; but that is a matter of state policy which this Court may regret but which it need not necessarily feel moved to change. After all, from the State point of view, Sonnesen was not a New Yorker, and Standard Oil is not a New Yorker, nor is Panama Transport Co. New York may if it wishes reject the Jones Act right which the fed-

eral statute has offered to it, or limit it. That is all there is to the *Sonnesen* case.

"The *Sonnesen* case merely means that hereafter seamen will be careful to resort to the federal courts and to turn away from those state courts which may feel as New York does. The Jones Act gives the seamen the non-removable option as between the state and the federal court, it will be recollected.

"The hostility of the New York State courts to the idea of applying the Jones Act to events on a foreign ship is not new; they denied their workmen the Jones Act right in 1928 and 1929 in

> *Resigno* v. *Jarka* (1928), 248 N. Y. 225, 1928 A. M. C. 1101 (no application for certiorari),

where the longshoremen was killed on board a German ship, and in

> *Uravic* v. *Jarka* (1929), 252 N. Y. 530, wherein certiorari was applied for and granted, the decision being squarely reversed (1931) 282 U. S. 234, 1931 A. M. C. 239, opinion by Justice Holmes for the unanimous court;

in the *Uravic* case the longshoreman was killed on board a different German ship.

"Now very curiously the *Sonnesen* opinion cites the *Resigno* case to support its denial of a remedy to the seaman in the foreign ship, without the least remark that the Resigno doctrine was swept away three years later by the *Uravic* case in this Court. See 298 N. Y. at 267, middle.

"Thus the *Sonnesen* case appears as a State situation wherein, either by oversight or perhaps by dogged adherence to a view differing from the view of the United States Supreme Court, the State policy is set

against giving relief to these seamen under this federal law. But that is matter of State discretion. It is not a matter of particular interest to this Court."

In addition to the above, the following circumstances in connection with the *Sonnesen* case deserve attention:

the Court of Appeals, instead of following the law as established in *Gerradin* v. *United Fruit Co.*, 60 F. 2d 927, cert. denied 287 U. S. 642; *Gambera* v. *Bergoty*, 132 F. 2d 414, cert. denied 319 U. S. 742, and *Kyriakos* v. *Goulandris*, 151 F. 2d 132, which were all in point (because Sonnesen had signed on in the United States), chose to make its decision upon the authority of the following cases:

(a) *The Hanna Nielsen*, 273 Fed. 171, cert. denied 257 U. S. 652.

(b) *Resigno* v. *Jarka*, 248 N. Y. 225.

(c) *O'Neill* v. *Cunard SS. Co.*, 160 F. 2d 446, cert. denied 322 U. S. 773.

The Hanna Nielsen was not a Jones Act case, the accident had taken place prior to the enactment of the statute; the *Resigno* v. *Jarka* case had been overruled by the Supreme Court of the United States 17 years earlier in *Uravic* v. *Jarka*, 1931, 282 U. S. 234, *supra*.

O'Neill v. *Cunard* was not in point, because the decedent had signed the articles in England.

Under such circumstances the *Sonnesen* case is hardly an authority to be followed.

POINT V

Petitioner's contention that the case at bar is distinguishable on the facts from the rule established in *Taylor* and *Kyriakos* cases, is without merit because the facts relied on by petitioner are not jurisdictional and hence have no bearing on the issue.

Petitioner insists on disregarding, or on trying not to see the neuralgic point of the case. There is one and only one fact; which is material in the context. That is the fact that plaintiff-respondent was signed on in the United States.

This jurisdictional fact runs like a red line through the decisions, its importance was first stressed in the *Patterson* v. *Bark Eudora*, 1903, 190 U. S. 169, *supra*, and expressed by Learned Hand, Ch. J. in the *Taylor* case stating that the U. S. Court of Appeals for the 2nd Circuit has

> "construed the Jones Act as imposing its terms upon all owners who sign on crews in an American port."

If facts additional to the one essential to jurisdiction, signing in the United States, are to be considered, we would prefer one like *Pettersson* v. *Maersk* (Southern District of New York, Cal. 1919) where a Swedish national, an oiler, was totally and completely disabled from contact with the deadly poisonous carbon tetrachloride, due to negligence of employer. The accident happened within a few leagues of the New England coast on the trip between New York and Boston. The case of Peruvian seaman, Chero, blinded on a Honduran vessel owned by Greek nationals, seeking justice, challenges the attention, as does that of Rolf Jensen, Norwegian, permanently blinded in one eye by the negligent act of coservant on the steamship NORPALMA, Liberian corporation and flag.

For this reason the Jones Act was held to be inapplicable in *The Paula*, 1937, 91 F. 2d 1001, and in *O'Neill* v. *Cunard White Star, Ltd.*, 1947, 160 F. 2d 446. In both of the last mentioned cases the claimants had signed on abroad. For the same reason, the Jones Act applies to *Taylor* v. *Atlantic Maritime Co.* (*supra*) and to the case at bar, because in each one of these the claimant signed on in the United States. The other facts relied upon by petitioner are not material, in fact they are entirely irrelevant. Therefore we need not even follow petitioner's reasoning and say that the statute does not make any express provision as to a requirement of diversity of citizenship, that therefore it raises no bar for a Danish seaman to sue a Danish shipowner.

The judgment rendered below in the case at bar is unassailable on the facts or on the law.

CONCLUSION

Since the holding below is consistent with the overwhelming weight of authority interpreting the Jones Act, and since petitioner has failed to provide a more convincing interpretation of the Congressional intent behind the Jones Act, the decision below should be affirmed.

Dated: New York, N. Y., December 6, 1952.

Respectfully submitted,

SILAS BLAKE AXTELL,
Counsel for *Amici Curiae*.

DAVID D. ERROLL,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,
Petitioner,

against

EVALD JOHANN LARSEN,
Plaintiff-Respondent.

BRIEF OF AMICI CURIAE ON BEHALF OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA AND THE SAILORS' UNION OF THE PACIFIC

RICHARD M. CANTOR,
Counsel for Amici Curiae.

GEORGE HALPERN,
of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

CONSENT TO FILE BRIEF AS AMICI CURIAE PURSUANT TO RULE 27, PARAGRAPH 9(a) OF THE RULES OF THE UNITED STATES SUPREME COURT

The undersigned, counsel for petitioner and counsel for plaintiff-respondent, hereby consent to the filing of the brief herein by Richard M. Cantor as counsel for Seafarers International Union of North America and Sailors' Union of the Pacific.

Dated: New York, N. Y.,
December 8, 1952.

JAMES M. ESTABROOK
Counsel for Petitioner.

RICHARD M. CANTOR
Counsel for Plaintiff-Respondent.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

BRIEF OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA AND THE SAILORS' UNION OF THE PACIFIC, AMICI CURIAE, ON THE WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Statement of Interest

The Seafarers' International Union of North America and the Sailors' Union of the Pacific represent some seventy thousand American seamen.

Although this suit, on its surface, affects only the interest of alien seamen and owners, its outcome will have a very substantial effect upon the American Merchant Marine, our members, and the defense of our Government.

As a labor organization, we are concerned not only with the practical benefits of our own members, but, as a matter

of principle, we are also concerned with the welfare of seamen everywhere.

We have worked side by side with these "strangers within our gates" and together we manned the vessels of our country in two wars.

We also cannot and should not forget that foreign seamen manned our vessels and helped rebuild our merchant marine when we lacked the experienced sailors to do so. This created jobs for our seamen and inured to the benefit of our country.

Thus, we have no objection to having foreign seamen receive benefits under our laws.

We also realize that the principles of free trade in a free world give foreign owners and their vessels a right to do business in this country.

But we do object to those foreign owners having an unfair advantage in not being required to live up to the obligations of our laws on the same basis as American owners. This affects our security as well.

No purpose will be served by our repeating the facts and law as stated in the plaintiff-respondent's brief and the other amici curiae briefs filed herein.

But, based on such facts and law, our experience with the operations and the results of such operations on the part of foreign shipowners, granting them the privilege of exemption from a liability imposed by our laws on American shipowners would hasten the deterioration of our merchant marine, cause job losses to our members and result in a weakening of the defense potential of our country.

The Argument

1. Naturally, we are concerned with those issues that are closest to our working conditions.

In that connection we wish to assert our justified and deep-seated objections to any legislation or judicial decision which impliedly or even indirectly may lead to a

lowering of the high standards, imposed by our laws and public policy, required in our Shipping Articles.

We streauously object to the opening wedge leading to the reduction of such standards as is implicitly contained in the claim put forth by petitioner.

He urges this Court to approve Articles signed in this country which violate our law and policy requiring such Articles to be fair, complete and without ambiguity.

The Articles offered in the record were admitted to be indefinite. They were purposely vague in order to hide the real scope of the vessel's voyage. This was and is part of the design or plot underlying the true operations of petitioner's vessel by making it appear that the owner, seamen, Articles and scope of the voyage were all foreign, without any connection, except a casual one, with the United States. As a matter of public record this is not the true situation.

The provision that the seaman could be discharged in any port upon seven days' notice is unconscionable. It is a vestige of the medieval Hanse Town rules.

But the most reprehensible point is the fact that the owner limits his liability to the laws of Denmark. This in a contract, the Articles, signed here and covering, regardless of pretenses to the contrary, a voyage from and to the United States.

In competing with our Merchant Marine and in carrying the goods of our foreign commerce, foreign owners should be compelled to conform to the standards of our Shipping Articles.

Many thousands of foreign seamen sign on and sail out of our ports.

To permit their Articles to contain provisions contrary to our public policy and inimical to our interests would only result in a consequent lowering of our standards. It is the door through which our hard-won rights will be attacked.

With trade diverted through the unfair competition so engendered, American shipowners will clamor for a reduc-

tion in standards and costs in the operation of our vessels. We will be left between the Scylla of unemployment and the Charybdis of lower standards.

This will injure not only our seamen but will affect and depress the economy of the nation.

The validation and approval of such Articles should not, as a matter of national preservation, be considered, no less granted.

2. Permitting the "law of the flag" to govern in all respects the activities of foreign seamen and vessels operating out of our ports and in our trade would be an act of discrimination against our own merchant marine and our seamen. It is both conceded and implicit in petitioner's argument that the economic standards imposed by foreign law are lower than ours. Thus, foreign vessels have a competitive advantage. The ruling of the Court below affords the American merchant marine no discriminatory advantage. It merely imposes equal obligations upon all who do business here.

Petitioner and the intervening governments are seeking a favored position, to the detriment of our own interests.

Our merchant marine is being steadily whittled away by the encroachment of foreign shipowners employing vessels purchased in a great percentage of cases from our own government at ridiculously low prices and labor hired at a far lower scale.

Large organizations of foreign seamen have set up permanent headquarters in our principal ports. Here they maintain regular hiring halls and furnish a constant pool or supply of labor to foreign operated ships such as the one in the case at bar.

Only 40% of the exports and imports of the United States were carried in American bottoms in 1951.

Contrast this with the 60% so carried in 1946.

Should this Court accelerate this trend by placing additional handicaps in the way of our own citizens and granting

a preferred and exempt status to the aliens competing with us?

We do not ask this Court or our Legislature to retaliate.

We do not seek discriminatory treatment on our own behalf.

All we ask is fair play.

If our laws are good enough for us, they should be good enough for our visitors who feed at our board.

3. Illustrations of the inequities created by those seeking to establish petitioner's position are sufficiently documented in the main and amici curiae briefs submitted in support of plaintiff-respondent's position.

4. Petitioner bemoans the likelihood of inequality between Danish seamen signing on in American ports and in foreign ports.

We are pleased that he acknowledges the disparity in the relief afforded between our laws and those of Denmark, and that Danish seamen prefer ours.

If he and his intervening government were sincere in their protestations against inequality, they could remedy the situation by affording all their seamen the increased benefits under their laws.

They do not wish to raise standards. They are interested in lowering them. The Danish Government has admitted that its concern is for dollar credits.

But this Court is confronted here with an even greater issue of inequality.

Is it fair for the 70,000 men of our unions to suffer the hazards of unemployment and the loss of our hard-won working conditions and standards in order to help depress the working conditions of foreign seamen engaged in carrying our commerce so that their owners and governments may gather in more dollars? And when we add the damage to our merchant marine, the injury to our economy and the blow to our defense, we can marvel at the temerity of this argument and the tactlessness of the suggestion.

Yes, inequality is at issue here. But it is the inequality inherent in the exorbitant price we are to pay for the preferred and immune position of foreign owners so that their governments can secure more dollars. For this, petitioner, his government, and all those of like mind are prepared to sacrifice the best interests of the United States and its people, as well as their own nationals.

This is not an exaggeration. The stakes, to these foreign owners and governments, are large. They can be won only at the expense of the United States. The four foreign governments who intervened in the petition for certiorari and the Danish Government on this hearing would not lightly take that step unless it represented a substantial economic advantage. We cannot believe that the mere cost for additional liability premiums was the motivating factor. Certainly they have not added anything to the law not contained in petitioner's brief.

Balancing the inequities posed, those facing the United States are far greater in magnitude and furnish an impelling reason for affirmance of the decision below as a matter of public policy and national interest and in keeping with sound rules of law.

5. The evil consequences of permitting such discriminatory practices within the stream of our commerce is not confined to economic loss alone.

During the last war the Seafarers International Union of North America and the Sailors' Union of the Pacific lost a great many of its members as casualties, both dead and injured, in the defense of our country. American seamen responded quickly and without hesitation to the call in time of national crisis. It will be difficult to furnish the necessary manpower in timely fashion in the future unless our merchant marine is preserved against discriminatory foreign competition. Our foreign "friends" of today may be neutral or ranged against us in the conflict of tomorrow. The United States of America can rely upon no other merchant marine but its very own.

Idle ships and idle men do not make good material for the defense of our land. And, like it or not, the world we live in calls for being prepared for all eventualities. Our Congress is investing a substantial portion of our wealth to that end. Should the courts undo some of that work by permitting foreign operators to destroy our merchant marine through some metaphysical logic favoring the law of the flag?

We respectfully pray that this Court be mindful of the paramount interests of our citizens, especially in those areas where the application of our law supplants discrimination with equality.

CONCLUSION

The overriding national interest of our government clearly requires that the decision below be affirmed.

Respectfully submitted,

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GEORGE HALPERN,
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IN THE

Supreme Court of the United States

October Term, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent,

BRIEF AS *AMICUS CURIAE* OPPOSING APPELLANT

SEAMEN'S UNION OF PANAMA,

By HERBERT LEBOVICI,
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The undersigned, as counsel for the Seamen's Union of Panama, respectfully files, with consent of the petitioner and plaintiff-respondent pursuant to Rule 27, paragraph 9(a) of the Rules of this Court, this brief as *amicus curiae*.

Statement

This brief memorandum is submitted on behalf of the New York branch of the Seamen's Union of Panama, which has a membership of approximately 1700 members, sailing principally on vessels of Panamanian, Honduran, Liberian and Greek flag vessels.

ARGUMENT

I

The seamen and vessels concerned are an integral part of the commerce of the United States.

In 1951 64.2% of all dry cargo brought into the United States was imported in non-United States vessels. (Appendix A, p. 4.) In 1951 62.1% of all cargo exported from the United States was exported from United States ports in non-United States vessels. (App. A, p. 2.) In 1951 50.7% of all liquid cargo imported into the United States was carried in non-United States vessels. (App., p. 5.) In 1951 66.4% of all liquid cargo exported were exported in non-United States flag vessels. (App., p. 3.)

Among the countries whose vessels were so engaged in 1952 were Panama (apart from the United States the 3rd largest maritime power in the World) with 5,597,000 dead weight tons of dry cargo merchant vessels (App. B) and 2,901,022 dead weight tons of tanker vessels (App. C). There was Liberia, another martime power with 1,501,000 dead weight tons of dry cargo vessels (App. B) and 1,011,804 dead weight tons of tankers (App. C). The *Shipping World* for August 20, 1952 (App. C) notes:

> "It is remarkable that the first tanker was placed under the Liberian flag only just over three years ago and that this flag now takes seventh place, with a total of more than 1,000,000 tons d. w."

Also represented were Honduras with 591,000 dead weight tons dry cargo and 229,910 tons dead weight of tanker vessels; Greece with 1,791,000 dry cargo and 167,770 dead weight tons of tanker vessels; Japan with 3,512,000 dead weight tons of cargo and 562,896 dead weight tons of tanker

vessels, to mention but a few. (App. B & C.) Concerning new vessels in building *Shipping World* (App. C) states:

> "The bulk of the newbuilding tankers fall into three broad groups. The largest comprises vessels for U. S. oil companies and tramp owners of U. S. and various other nationalities which are likely to go under U. S. Panamanian and Liberian flags. . . ."

Furthermore the designation of a vessel as Honduran, Liberian, Panamanian or otherwise, signifies only that the vessel flies the particular flag but that a corporation of different nationality has paid a fee for the privilege of hoisting a particular flag. The stockholders of this corporation may be and usually are of still a third and different nationality, and the seamen on board the vessel are citizens of any countries of the world.

The seamen who man these vessels and carry this cargo are hired, discharged, and find their employment in the United States on the beginning and ending of the voyages when cargo is loaded or discharged. No more so, than the vessels themselves, are they members of a community to which they return, other than the United States. Other briefs submitted herein have proven that in the majority of situations so concerned, the actual control, direction and operation of these vessels is likewise from within the United States.

Necessarily, because the heart of the shipping operation is here in the United States, the laws of the United States predominantly subscribe and limit the mechanics of the shipping operation, and the functioning of the personnel engaged in such operation on both the side of the employer and the employee. For example in the event of the vessel's loss or damage the United States Limitation of Liability

Act can be made to apply. In the event of damage or loss to cargo the United States' Carriage Of Goods By Sea Act will be applicable. The public press is presently replete with the complaints of other nations with respect to the manner and extent to which the new McCarran Law (the Immigration and Nationality Act of 1952) will control the movement, shipment and discharge of foreign seamen on board non-United States vessels entering United States harbors. It is undisputed that the La Follett Act controls payment of wages to foreign seamen in the United States. In short, it is perhaps not too strong to say that every element of the shipping operation in the United States is controlled by the United States law except perhaps for the exception now sought to be claimed by the petitioner with respect to a seaman's right to claim recompense for injuries suffered in the vessel's service.

II

To remit the seaman to the law of the flag is to pay lip service to his right to a remedy.

It has been considered dogma that a seaman, is the ward of the legislature and the Court (*Bainbridge* v. *Merchants & Miners Transp. Co.*, 287 U. S. 278, 1932), will not be turned out of Court without a remedy. Thus, in *The Falco*, 20 F. 2d 362 (CA 2) 1927, the Court states at page 363:

> "Nevertheless, Courts of Admiralty, which are sensitive to a seaman's rights, or at least have always professed to be, will in such cases, before turning him out of Court, satisfy themselves that there are no special circumstances which will leave him without adequate remedy. The Bocherdass Ambaidass, Fed. Cas. No. 1,203; Willendson v. Forsoket, Fed. Cas. No. 17,682; The St. Oloff, Fed. Cas. No. 17,357; The Topsy (D. C.) 44 F. 631; The Sirius (D. C.) 47 F. 825; The Ester (D. C.) 190 F. 216."

Apart from the Jones Act now the subject of consideration, the foreign seaman in the United States has received little recompense for industrial accidents suffered by him so as to justify by performance the implied promise contained in the above quotation from *The Falco, supra.* His right to relief in courts of the United States, apart from rights accorded by the Jones Act, consisted of two principal factors. The first, was his right, if any, to avail himself of the United States courts as a forum in which to seek relief. His only right in this respect was to file a libel in Admiralty, that is, to seek relief before a court without a jury. Whether or not the court would entertain the case was a matter resting in the sole discretion of the district court judge, *Langnes* v. *Green,* 282 U. S. 531, 51 S. Ct. 243. It is common knowledge that in the exercise of this discretion the Admiralty courts invariably decline jurisdiction, and the libel is dismissed at the threshold. The seaman's adjective right was at best the right to file a libel which equally quickly would be declined.

Substantively the seaman was in no better position. There was no common certain remedy applicable to all cases in those few where the court retained jurisdiction of the case long enough to consider whether or not damages should be awarded for the injuries suffered. Under the general maritime law, if that were the standard adopted, the seaman's right was to recover for maintenance and cure, and indemnity in the event of unseaworthiness not affected by the contributory fault of a fellow seaman, or of a risk assumed by the seaman himself. It was the insufficiency of this remedy for United States seamen which required the passage of the Jones Act. Even this remedy, however, was often denied by our courts to non-United States seamen as witness *The Hanna Nielsen,* 273 Fed. 171, cert. denied 257 U. S. 652, the doctrine of which would have required the foreign seaman to prove the existence of some remedy by foreign law as a prerequisite to any recovery at all. The

utter uncertainty and complexity as to the measure or nature of relief that might be afforded is illustrated in *The City of Athens,* 83 F. Sup. 67 at page 83 (D. C. Maryland).

Obviously any remedy so difficult to come by and so uncertain of application is no remedy at all. The seaman shipping on a foreign vessel from the United States has no remedy, unless the minimum security afforded by the Jones Act (Section 33 of the Merchant Marine Act of June 5, 1920, 41 Stat. 1007, Title 46 U. S. C. A. Section 688) as interpreted by the Court of Appeals for the Second Circuit affords him that minimum security which the Court of Appeals has interpreted it to afford.

In the instant case, the statement is categorically made at page 4 of the appellant's application for certiorari that Larsen, the plaintiff *sub judice,* had received all the benefits afforded to him by Danish law, in these words:

> "These were the benefits to which Larsen was entitled under the Danish Law as subscribed to by Larsen when he signed aboard the SS Randa."

In view of the pitiful nature of the payment made to Larsen, when compared with the serious nature of the injury suffered, the statement quoted would constitute, if true, a very serious reflection upon the adequacy of any remedy afforded by Danish law. That it is not true, and, that Danish law has a workmen's compensation system applicable to seamen on Danish vessels, however, does not improve the situation. It does not appear that any benefits that the Danish workmen's compensation law might provide were in any way available to Larsen. Very long experience with a legal practice in behalf of foreign seamen justifies the categorical statement that the workmen's compensation laws of those few countries that claim to provide such benefits to seamen do not in practice afford a remedy to the seaman affected. Ritualistically the pattern in each such

case is uniformly the same. The seaman injured aboard a vessel upon discharge from the hospital reports to the office of the vessel or its agent. Here he is told that he must go to the consulate. The consulate advises him that he has received all that the particular national law affords him. He then seeks the assistance of a United States lawyer who institutes an action, either in admiralty or at law, seeking to impress the provisions of United States law upon the transaction. Then, for the first time, the seaman hears about workmen's compensation when an application is made to the court to dismiss or decline the libel or complaint as the case may be upon the alleged ground that the foreign law affords a remedy by way of workmen's compensation, and, that the respective consul is prepared to entertain the application for such compensation. The application to the court prevailing, the complaint is dismissed, and, the seaman never receives anything through workmen's compensation or otherwise.

It is claimed with respect to the Scandinavian nations that the situation is different. Experience does not justify the contention. Furthermore the usual practice among such laws, which have very little application to the reality of the seaman's situation, is to afford an alleged right of relief only to nationals of the same flag. If therefore the seaman should be as is often the case a Dane or a Greek on board a Norwegian vessel, even the paper right to compensation does not purport to exist.

Panama likewise has a workmen's compensation law which is allegedly applicable to seamen. The illusory nature of the remedy so provided may be judged from the following. John Georgiou was a Greek seaman employed aboard the Panamanian flag IONIAN PIONEER. He was injured while working aboard this vessel in Chester, Pennsylvania, on June 1, 1951. His counsel brought suit for the payments provided in the Panamanian Workmen's Compensation

Law in a case entitled *Georgiou* v. *Compania de Navegacion de Cristobal, S.A.*, Index Number 52565/1951, in the Municipal Court of the City of New York. Compania de Navegacion, as may be noted, is one of those companies whose stock is held by persons of Greek extraction who maintain an office within the office of Simpson, Spence & Young, Inc., at 52 Broadway, in the City of New York.

On the trial of the action the plaintiff was met by two contentions.

1. That a state will not enforce the workmen's compensation laws of another stated and cited *Vardicchio* v. *McNab, etc., Co.*, 178 App. Div. (N. Y.) 48; *Lehman* v. *Ramo Films, Inc.*, 92 Misc. 418; *McCarthy* v. *McAllister Steamboat Company*, 94 Misc. 692; *Yosi Ogino* v. *Barnard C. Black, et al.*, 238 App. Div. 146 (N. Y.); Freund, *Chief Justice Stone and the Conflict of Laws*, 59 Harv. L. Rev. 1210, 1229.

2. That the plaintiff could not recover because he did not meet the procedural requirement that the case be brought in a Panamanian court, as required by procedural provisions of the Law of the Republic of Panama.

Thus, where the claimant is willing to limit himself to the recovery provided by the law of the vessel's flag, the shipowners and their insurers are not willing to meet even this minimum requirement of justice.

Prior to the application of the Jones Act to foreign vessels and foreign seamen, the initial assumption made by the courts was that the foreign vessel had a system of law to which the seaman might apply and gain relief. Such assumption required that the seaman pick himself up and proceed to the country of the vessel's nationality and prosecute his remedy in the forums of that country. For an injured or disabled seaman to be so required, and to make

his way to Panama, Liberia, Honduras or Denmark as the case may be and seek his remedy there is so unreal as to afford no remedy whatsoever, and our courts have on occasion so recognized. *The Eir*, 60 F. 2d 124, 125 (CA 4) 1932.

Furthermore, unlike the present day situation in the days of *The Belgenland*, 114 U. S. 355 (1884), and *The Scotia*, 105 U. S. 24 (1881), when the country of the vessel's flag provided a forum common to the nationality of both the seaman and the defendant, there was at least some logic to the requirement, if no practicable result. At least in theory and sometimes in practice in those days, both the vessel and the seaman returned to a common home port where their troubles might be litigated.

The modern situation, however, where the seaman of one nationality signs on a vessel of a particular flag owned by a corporation of a third nationality, and to none of which nations none of the three ever return, presents an entirely different situation.

The remissions of the seaman's claim for relief to distant and foreign authorities and forums has a dream-like aspect if it be appreciated that in practically all such cases the actual operation of the vessel in question is directed from an office located in the City of New York or elsewhere in the United States.

It is likewise clear, that the nations of the vessel's flag provide no remedy to the seaman in the United States or elsewhere. Thus for example the International Labour Office in a report of a committee of inquiry of that organization entitled "Conditions In Ships Flying The Panamanian Flag", published at Geneva in 1950, found that the fourth largest maritime power (Panama) in the world was impotent to police its vessels with respect to those elemental conditions of safety and seaworthiness which have been internationally recognized such as the subject matter of the

International Load Line Convention and the Safety at Sea Convention. At page 21 of this report the Committee found:

> "The two most important international instruments governing safety at sea are the international Safety of Life at Sea Convention, 1929, and the Loadline Convention, 1930. Both these Conventions were ratified by Panama in July, 1936. The former Convention was revised in London in 1948, but only a few countries have so far confirmed their acceptance of it. The two Conventions contain an exhaustive series of provisions concerning all aspects of safety at sea: construction and survey, life-saving appliances, wireless telegraphy, signals, marking of loadlines, loading of timber, and various certificates that must be obtained on these matters. Most countries which have acceded to these Conventions have issued regulations to secure their enforcement on national ships, but this has not so far been done by Panama."

It was likewise impotent to enforce such laws as existed with respect to seamen, and, such law as did exist, were conflicting and below international standards. At page 28 of Conditions, the report states:

> "As was already pointed out the weakness of the Panamanian Consular service in the past has left the owners and masters in many cases with a comparatively free hand in determining conditions on board their ships."

At page 33 of the report in discussing "Claims For Liability Or Social Security" the report states:

> "The Committee found that on these points the answers to its questions were in most cases very vague. Sometimes the masters (or other persons

interviewed) stated that they thought the shipowner was covered by insurance against his liability towards sick or injured seamen, but on closer questioning they expressed doubts as to whether illness would be covered beyond a very short period and as to whether repatriation would be covered. In other cases the persons questioned said no case had arisen to their knowledge, and therefore they did not know what might happen. Others admitted that they had no real guarantees in their contracts and that they probably could not enforce any claims they might have. The Committee has received evidence in a number of cases of the difficulty which seafarers or their dependents have in enforcing their claims to compensation which may be due to them under Panamanian law. The claimant may be in Sweden or China. The agent may be in Panama and the actual owner in New York or London or Buenos Aires. If the claim is brought before the Panamanian courts, legal expenses may swallow up most of the claim. If a settlement is attempted through the Panamanian consul in the country of origin, it is a matter for negotiation between the parties, and the local courts may well declare themselves incompetent if recourse is had to them.

"In the ships visited, the Committee was informed (but had no means of verifying the statement) that the shipowners' liability was fully covered, usually by commercial insurance, in 17 cases out of 30. In two cases it was stated that the shipowner had no liability in the event of sickness or injury, and in three cases doubts were expressed as to whether any liability would be acknowledged. In two cases it was doubted whether repatriation at the end of illness would be covered, and in one case it was stated that medical treatment would probably be granted only for a very

short period. As regards social security, there were only five ships in which the crews were insured (these were all Italian). In 18 cases it was definitely stated that there was no social security coverage of any kind. In two ships certain members of the crews were covered by voluntary group insurance in the United States. However, even in certain cases where there was no insurance it was stated that compensation under Panamanian law had been paid to permanently disabled men or to the dependents of seafarers who died on service. But it appeared that this was usually only after pressure had been brought on the owners by the Panamanian consular authority."

Obviously, in the United States or elsewhere, Panama enforces no practical relief to the seaman in Larsen's position even though the countries claim to have legislation that is applicable to their situation. There is no basis for belief that the situation with respect to Denmark is different.

Certainly it is also the more appropriate that a remedy for injury be available to the seaman who works on vessels unpoliced for elemental conditions of safety.

That the factual situation with respect to such vessels grows worse rather than better with the passage of time, is evidenced, if by nothing else, by the following quotation of the *International Transport Workers Journal* of September, 1952, published by the International Transport Workers Federation with respect to its 22nd Congress at Stockholm of July, 1952.

"After holding their own separate conference, the Dockers' and Seafarers' Sections met in a joint conference out of which the important decision emerged that in future the dockers' unions affiliated with the ITF will join hands with the seamen's unions in the campaign the ITF has been carrying on during the

past few years against the practice of shipowners in different countries of registering their ships under Panamanian, Honduran, Liberian and similar flags for the purpose of evading their legal responsibilities towards their crews. An International Campaign Committee for the Promotion of Fair Practices has been set up and steps are to be taken which it is believed will not be long in showing their effectiveness. One of these will be the creation of a special fund to take the place of the differential rates which shipowners have hitherto been required to pay for seamen sailing under the flags of countries which have not an effective social security scheme. In future they will be required to contribute to this fund. A special officer is to be engaged to take charge of the campaign."

But what of other countries that have little or no law whose vessels carry cargo in and out of United States ports. Take for example the martime law of Liberia which consists of a single sentence. (The Liberian Maritime Code as Amended 12/22/49—Title I.)

"In so far as it does not conflict with any other provisions of this Act, the non-statutory general Maritime Law of the United States of America is hereby declared to be and is hereby adopted as the general Maritime Law of the Republic of Liberia."

What is the remedy of a Greek or Danish seaman who has joined such a vessel owned by a Panamanian corporation, and where must he seek it? Is his remedy under Panamanian law because the law to be applied on shipboard is that of the domicile of the vessel's owner (*Moore's Digest of International Law*, §323; *The Hamilton*, 207 U. S. 398; *Fisher*

v. *Fisher*, 250 N. Y. 313, 318-19 (1929); *International Nav. Co.*, 123 F. 475 (CA 2) 1903; *The San Jose Indiano*, Fed. Cas. No. 12, 322) or is it under Liberian law because such is the law of the flag? *Sonnensen* v. *Panama Transport Co.*, 298 N. Y. 262 (1948); *Rainey* v. *N. Y. C. P. S.S. Co.* (CA 9), 216 F. 449 (1914). Must he go to Monrovia to sue, or, to the Republic of Panama? What is the possibility of securing jurisdiction over a financially responsible defendant in either place? The International Labour Office committee found at page 9:

> "The 644 vessels were owned by 384 different companies, the majority of the ships belonging to companies with only one ship registered in Panama. There were 293 such companies, while 51 companies had only two ships each. Only four companies had more than ten ships each."

It is clear that these "companies" had no effective presence in Panama which might be the subject of practical jurisdiction. The International Labour Office Committee Report stating at page 22:

> "The situation of Panama as regards its Merchant Marine is a peculiar and very exceptional one. The vast majority of the ships which constitute its fleet do not go to Panama for registration nor do they normally trade to and from ports in that country . . . so far as can be learned, the vast majority of the owners of ships under the Panama flag live elsewhere than in Panama, being represented in that country merely by an agent."

Obviously again, the only place where the seaman has a practical and enforcible remedy is in the United States where the vessels come in and the cargo is handled.

To sum up, apart from the Jones Act, the alien seaman has no certain, uniform and effective remedy for the prosecution of claims arising in the service of a non-United States vessel.

III

It is entirely fair that the Jones Act should be applied to foreign vessels in the United States.

Nor is this to suggest, that this Court should attempt to supplant any proper application of foreign law to a vessel, or, that this Court should make mandatory the operation of United States law in all cases aboard foreign vessels. The Jones Act itself, states:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury. . . ."

Clearly under the Jones Act, the seaman (and "any seaman" clearly includes a foreign seaman) has in addition to any other rights which he may or may not have, an election to maintain a claim under the Jones Act. This is not a statement that the seaman may recover twice. It is merely a statement that he may elect to place his claim for recovery under the Jones Act.

Such election is entirely consistent with the existence of any right or remedy that may or may not exist under any foreign law. Assuming that foreign law gives to foreign seamen an enforceable right or remedy, there is no reason why he should not have the same right of election that the American seaman has, and if upon conscious election he shall stake his chances under the Jones Act, no result is

achieved that is other than fair. On the other hand in all such cases as no other practical alternative is provided to the seaman he still has at least his remedy under the Jone Act to prosecute. Far from creating a right to recover twice, for which no one argues, the seaman seeks to uphold the only one practical right of recovery he has thus far been able to obtain. If another remedy be occasionally available, he will have to elect, as required by the Act, between the two.

If absolute symmetry is lacking in such a result, it is not a matter of judicial concern. The court is too well aware of similarly asymmetric results that have been sustained by the martime courts of this country and others. *The Titanic*, 233 U. S. 718 (1913); *Robinson on Admiralty*, p. 904. Nor is the result so achieved an improper interference with the sovereign rights of other municipalities. Just as similarly, the United States has legislated with respect to seamen's wages, ocean bills of lading, limitation of liability, immigration and other phases of marine law which merely impose United States law to a limited extent as a condition of the foreign vessel's entry to our ports. It may properly do so with respect to injury claims. Such a result is not even expensive to the shipowner, for it is within the realm of common knowledge that the risks so assumed are insured, and, the losses so had are borne where they properly should be borne, by the industrial community which creates them. *Keen* v. *Oveaseas Tankship Corporation* (CA 2) (Decided Feb. 5, 1952, not yet officially reported.) 1952 A. M. C. 241, cert. den. 1952 A. M. C. 1281.

Conclusion

Justice, which has long been denied seamen on non-United States vessels, requires that the Jones Act continue to be applied to foreign seamen shipping from these ports in such cases as they shall elect to pursue such remedy, and that the holdings of the lower court be affirmed.

Respectfully submitted,

SEAMEN'S UNION OF PANAMA,

By HERBERT LEBOVICI,
Counsel for Amicus Curiae.

JACOB RASSNER,
of Counsel.

Appendix A

U. S. DEPARTMENT OF COMMERCE
Charles Sawyer, Secretary

BUREAU OF THE CENSUS
Roy V. Peel, Director

CENSUS

UNITED STATES FOREIGN TRADE

CALENDAR YEAR 1951

SUMMARY REPORT
FT 973

FOR IMMEDIATE RELEASE
September 26, 1952

WATER-BORNE TRADE BY TRADE AREA

COVERAGE

This report presents annual statistics in terms of calendar year periods. The calendar year figures represent shipments unladen from and laden on vessels arriving or departing during the interval January 1 - December 31, and are being presented as part of an interagency program designed to promote the presentation of governmental shipping data on as nearly a uniform basis as possible. The official sources for determining vessel arrival and departure dates are the Bureau of Customs Forms 1400 and 1401, Record of Vessels Engaged in Foreign Trade -- Entered or Arrived Under Permit to Proceed and Record of Vessels Engaged in Foreign Trade - Cleared or Granted Permit to Proceed, respectively.

The statistical year figures for 1951, representing the aggregate of transactions processed during the twelve monthly account periods January - December 1951, were published in Report FT 973 dated June 17, 1952. This report included some shipments unladen from and laden on vessels during the latter part of 1950 and omitted some late shipments made during 1951 for which information was not received in time to be included in the statistical year figures (see July 1952 issue of Foreign Trade Statistics Notes).

The 1951 calendar year figures presented in this report reflect the data shown in the statistical ledgers as of September 1, 1952. Any subsequent data received for 1951 transactions will not be included in the calendar year figures without the concurrence of an interagency group representing the Bureau of the Budget, the Maritime Administration, the Corps of Engineers of the Department of the Army, and the Bureau of the Census.

This Report FT 973 gives the shipping weight of exports and imports of merchandise carried on tankers, and on dry cargo vessels classified according to type of service, i.e., "liner," and "irregular or tramp." "Liner" service is that type of service offered by a regular line operator of vessels on berth. The itinerarles and sailing schedules of vessels in "liner" service are predetermined and fixed. "Irregular or tramp" service is that type of service afforded by vessels, other than tanker vessels, which are chartered or otherwise hired for the carriage of goods on special voyages. Vessels in this type of service are not on berth and their sailing schedules are not predetermined and fixed.

Vessel export figures in this report include exports and re-exports from continental United States, trade between Alaska, Hawaii, Puerto Rico, and foreign countries, exports of non-Department of Defense controlled cargo under the various foreign aid programs, and export shipments to United States Government agencies except the United States armed forces abroad. Effective with the statistics for July 1950, export shipments of "Special Category" commodities (see Foreign Trade Statistics Notes for September and October 1950) are excluded from the export figures in this report. Also excluded are shipments to the United States armed forces abroad for their own use, shipments of Department of Defense controlled cargo as described below, shipments between continental United States and the Territories and Possessions, and shipments between the Territories and Possessions.

Exports by vessel are credited to the trade area in which the merchandise was unladen.

Import figures in this report are general imports and represent the total of imports for immediate consumption plus entries into Customs bonded storage and manufacturing warehouses. Imports are credited to the trade area in which the merchandise was laden.

These figures do not include arrivals or departures of cargo moving in transit under bond through the United States from one foreign country to another. Information on such shipments moving by vessel is presented in Report FT 981. Vessel shipments by mail or parcel post are not included in either the export or import data. Shipments valued at $100 or less are excluded from the export data. Effective July 1951, similarly valued shipments are excluded from import statistics where the shipping weight is less than 10,000 pounds.

Export shipments on Army-or Navy-operated vessels which are included in the total United States export statistics such as in Reports FT 900, 930, 950, 410, 420, etc., are not included in the export figures shown in this report; but information on such shipments is presented in Report FT 976. Army-or Navy-operated vessel shipments represent export shipments under special programs such as Civilian Supply, Economic Cooperation Administration, Greek-Turkish Aid, etc., made by the Department of the Army or Department of the Navy under the following arrangements:

1. Shipments under these programs by the Departments of the Army and Navy on American-flag commercial vessels. In most cases the vessels are chartered by the Army or Navy under time charter, voyage charter, or space charter arrangements.
2. Shipments under these programs by the Departments of the Army and Navy on Army or Navy transports (vessels owned and operated by the Army or Navy).

Import shipments on Army or Navy transports (vessels owned and operated by the Army or Navy), which are included in the total United States import statistics such as in Reports FT 900, 930, 950, 110, 120, etc., are not included in the import figures shown in this report. However, any import shipments on vessels chartered by the Army or Navy under time charter arrangements are included (export shipments under such arrangements are excluded from the export vessel shipping statistics).

The data presented in this report are preliminary and subject to revision.

Prepared in the Bureau of the Census, Foreign Trade Division

Table 1.--SHIPPING WEIGHT OF UNITED STATES EXPORTS OF DOMESTIC AND FOREIGN MERCHANDISE ON DRY CARGO VESSELS BY TYPE OF SERVICE, TRADE AREA AND FLAG OF VESSEL: CALENDAR YEAR 1951

Data in millions of pounds. Totals represent the sums of unrounded figures, hence may vary slightly from the sums of the rounded amounts

Trade Area	Calendar year 1951									Calendar year 1950		
	Total dry cargo			Liner service[1]			Irregular or tramp service[1]			Total dry cargo		
	Total	United States flag	Percent U.S.	Total	United States flag	Percent U.S.	Total	United States flag	Percent U.S.	Total	United States flag	Percent U.S.
Trade area grand total[2]	202,729.9	76,836.3	37.9	50,422.9	23,537.9	46.7	152,355.1	53,298.4	35.0	107,618.1	32,966.1	30.6
Foreign trade areas except Canadian	156,073.4	65,088.2	41.7	50,027.9	23,394.7	46.8	106,045.6	41,693.5	39.3	61,312.5	22,060.6	36.0
Caribbean	8,823.3	3,420.4	38.8	7,054.8	3,248.7	46.0	1,768.6	171.7	9.7	8,087.9	3,157.1	39.0
East Coast South America	10,117.5	3,524.2	34.9	4,092.0	1,991.6	48.7	6,025.5	1,532.6	25.4	4,983.6	1,102.3	22.1
West Coast South America	2,746.3	1,138.6	41.5	1,755.7	1,005.7	57.3	990.6	132.9	13.4	1,777.2	698.3	39.3
West Coast Central America and Mexico	294.4	140.7	47.8	252.5	138.3	54.8	41.9	2.4	5.7	254.6	128.9	50.6
Gulf Coast Mexico	953.5	325.9	34.2	575.9	283.0	49.1	377.6	42.9	11.4	935.7	289.3	30.9
United Kingdom and Eire	13,647.8	4,541.2	33.3	4,009.4	1,594.4	39.8	9,638.4	2,946.8	30.6	5,834.5	2,116.8	36.3
Baltic, Scandinavia, Iceland and Greenland	10,401.0	2,847.7	27.4	2,759.6	906.3	32.8	7,641.4	1,941.4	25.4	2,672.3	701.2	26.2
Bayonne-Hamburg Range	53,277.7	24,080.2	45.2	11,412.0	5,192.1	45.6	41,865.7	18,888.1	45.1	14,085.0	5,410.8	38.4
Portugal and Spanish Atlantic	826.9	91.4	11.1	304.6	28.9	9.5	522.3	62.5	12.0	847.7	241.1	28.4
Azores, Mediterranean and Black Sea	24,377.4	10,075.6	41.3	5,298.1	2,420.9	45.7	19,079.3	7,654.7	40.1	8,513.7	2,936.2	34.5
West Coast Africa	2,159.8	785.4	36.4	705.0	255.9	36.3	1,454.8	529.5	36.4	764.7	221.6	29.0
South and East Africa	1,619.4	1,029.4	63.6	1,384.5	972.3	70.2	234.9	57.1	24.3	1,210.8	506.7	41.8
Australasia	1,641.7	335.7	20.4	1,371.3	322.8	23.5	270.4	12.9	4.8	1,203.0	251.7	20.9
India, Persian Gulf and Red Sea	8,699.5	5,524.4	63.5	2,097.4	1,098.3	52.4	6,602.1	4,426.1	67.0	3,085.5	770.2	25.0
Straits Settlements and Netherlands East Indies	2,676.2	1,285.1	48.0	2,602.4	1,238.9	47.6	73.8	46.2	62.6	577.0	249.2	43.2
South China, Formosa and Philippines	973.6	694.7	71.4	780.9	555.6	71.2	192.8	139.1	72.1	2,760.8	1,382.2	50.1
North China including Shanghai and Japan	12,837.8	5,247.5	40.9	3,572.1	2,140.8	59.9	9,265.7	3,106.7	33.5	3,718.5	1,897.0	51.0
Canadian trade areas	46,704.5	11,748.0	25.2	395.0	143.1	36.2	46,309.5	11,604.9	25.1	46,305.6	10,905.5	23.6
Pacific Canada	573.8	265.0	46.2	219.7	142.5	64.9	354.1	122.5	34.6	541.9	202.3	37.3
Great Lakes Canada	43,114.6	11,458.0	26.6	36.5	.....	.....	43,078.1	11,458.0	26.6	42,609.9	10,701.9	25.1
Atlantic Canada and Newfoundland	3,016.0	24.9	0.8	138.7	0.6	0.4	2,877.3	24.3	0.8	3,153.8	1.3	(*)

*Denotes less than 50,000 pounds; less than one tenth of one percent.

[1]Classification of dry cargo vessels as "liner" or "irregular or tramp" is based on characteristics of each voyage (whether the voyage is part of a scheduled berth operation, etc.) using the classification criteria of the Maritime Administration.

[2]Export shipments of "Special Category" commodities (See Foreign Trade Statistics Notes for January and February 1952) are excluded from these data.

Table 2.--SHIPPING WEIGHT OF UNITED STATES EXPORTS OF DOMESTIC AND FOREIGN MERCHANDISE ON TANKER VESSELS BY TRADE AREA AND FLAG OF VESSEL: CALENDAR YEAR 1951

Data in millions of pounds. Totals represent the sums of unrounded figures, hence may vary slightly from the sums of the rounded amounts

Trade area	Calendar year 1951			Calendar year 1950		
	Total	United States flag	Percent U. S.	Total	United States flag	Percent U. S.
Trade area grand total[1]	28,843.8	9,679.4	33.6	18,270.0	7,941.8	43.5
Foreign trade areas except Canadian	20,258.2	4,708.8	23.2	9,697.9	4,051.1	41.8
Caribbean	3,083.2	2,049.8	66.5	2,319.4	1,565.6	67.5
East Coast South America	484.1	277.0	57.2	310.1	87.4	28.2
West Coast South America	721.6	334.0	46.3	757.3	227.8	30.1
West Coast Central America and Mexico	1,706.0	490.9	28.8	1,449.0	395.5	27.3
Gulf Coast Mexico	24.8	9.9	39.9	34.6	11.9	34.4
United Kingdom and Eire	4,460.5	332.9	7.5	2,084.2	433.6	20.8
Baltic, Scandinavia, Iceland and Greenland	1,293.1	101.7	7.9	543.4	267.7	49.3
Bayonne-Hamburg Range	1,457.0	348.4	23.9	987.5	564.1	57.1
Portugal and Spanish Atlantic	43.8	2.3	5.3	46.4	.....	.....
Azores, Mediterranean and Black Sea	715.0	203.0	28.4	739.2	361.1	48.9
West Coast Africa	235.9	42.6	18.1	92.0	71.7	77.9
South and East Africa	419.9	110.2	26.2	100.4	32.0	31.9
Australasia	1,354.7	111.9	8.3	23.5	2.5	10.6
India, Persian Gulf, and Red Sea	810.6	64.1	7.9	0.1	0.1	100.0
Straits Settlements and Netherlands East Indies	638.9	.....	.....	(*)	.....	.....
South China, Formosa and Philippines	440.5	57.7	13.1	46.3	.....	.....
North China Including Shanghai, and Japan	2,368.6	172.3	7.3	164.2	30.1	18.3
Canadian trade areas	8,585.6	4,970.6	57.9	8,572.1	3,890.7	45.4
Pacific Canada	4,245.2	2,645.0	62.3	4,249.4	2,111.8	49.7
Great Lakes Canada	3,910.8	2,059.1	52.7	3,858.4	1,395.7	36.2
Atlantic Canada and Newfoundland	429.5	266.5	62.0	464.3	383.2	82.5

*Denotes less than 50,000 pounds; less than one tenth of one percent.

[1]Export shipments of "Special Category" commodities (see Foreign Trade Statistics Notes for January and February 1952) are excluded from these data.

Table 3.--SHIPPING WEIGHT OF UNITED STATES GENERAL IMPORTS OF MERCHANDISE ON DRY CARGO VESSELS BY TRADE AREA, TYPE OF SERVICE, AND FLAG OF VESSEL: CALENDAR YEAR, 1951

Data in millions of pounds. Totals represent the sums of unrounded figures, hence may vary slightly from the sums of the rounded amounts

Trade Area	Calendar year 1951									Calendar year 1950		
	Total dry cargo			Liner service[1]			Irregular or tramp service[1]			Total dry cargo		
	Total	United States flag	Percent U.S.	Total	United States flag	Percent U.S.	Total	United States flag	Percent U.S.	Total	United States flag	Percent U.S.
Trade area grand total	99,890.1	35,754.9	35.8	35,116.1	16,463.2	46.9	64,774.0	19,291.7	29.8	93,777.1	29,150.3	31.1
Foreign trade areas except Canadian	75,413.4	31,930.5	42.3	33,776.9	15,974.5	47.3	41,636.6	15,956.0	38.3	69,282.5	25,954.1	37.5
Caribbean	17,568.0	7,189.9	40.9	3,968.3	1,873.9	47.2	13,599.7	5,316.0	39.1	16,036.7	3,638.6	22.7
East Coast South America	5,805.6	2,418.1	41.7	3,394.8	1,814.0	53.4	2,410.8	604.1	25.1	5,309.3	1,897.5	35.7
West Coast South America	9,982.0	7,705.5	77.2	2,574.4	1,704.7	66.2	7,407.6	6,000.8	81.0	8,972.3	7,279.5	81.1
West Coast Central America and Mexico	1,277.5	1,022.9	57.5	484.4	402.1	83.0	1,293.1	620.8	48.0	1,773.9	1,224.1	69.0
Gulf Coast Mexico	578.6	138.7	24.0	327.5	134.7	41.1	251.1	4.0	1.6	790.5	225.7	28.6
United Kingdom and Eire	1,771.4	574.8	32.4	1,301.2	557.0	42.8	470.2	17.8	3.8	1,782.2	633.0	35.5
Baltic, Scandinavia, Iceland and Greenland	7,694.3	2,110.2	27.4	2,580.0	746.7	28.9	5,114.3	1,363.5	26.7	7,150.7	1,499.9	21.0
Bayonne-Hamburg Range	8,431.7	1,827.0	21.7	5,822.0	1,643.1	28.2	2,609.7	183.9	7.0	6,538.1	1,738.7	26.6
Portugal and Spanish Atlantic	671.0	128.9	19.2	431.1	124.6	28.9	239.9	4.3	1.8	559.4	190.1	34.0
Azores, Mediterranean and Black Sea	4,258.8	1,325.9	31.1	1,985.1	919.7	46.3	2,273.7	406.2	17.9	4,038.8	1,032.0	25.6
West Coast Africa	2,695.8	855.2	31.7	1,362.2	602.9	44.3	1,333.6	252.3	18.9	2,113.8	478.1	22.6
South and East Africa	2,616.5	1,552.5	59.3	1,559.4	1,334.1	85.6	1,057.1	218.4	20.7	2,733.8	1,382.2	50.6
Australasia	688.3	251.2	36.5	445.1	212.1	47.7	243.2	39.1	16.1	637.5	219.9	34.5
India, Persian Gulf and Red Sea	3,340.7	1,155.7	34.6	1,958.1	1,005.9	51.4	1,382.6	149.8	10.8	3,380.4	1,008.1	29.8
Straits Settlements and Netherlands East Indies	2,310.7	1,420.2	61.5	1,870.2	1,062.7	56.8	440.5	357.5	81.1	2,457.5	1,297.6	52.8
South China, Formosa and Philippines	4,394.5	1,775.7	40.4	2,999.3	1,400.8	46.7	1,395.2	374.9	26.9	3,797.9	1,602.5	42.2
North China including Shanghai and Japan	828.1	477.8	57.7	718.8	435.4	61.0	114.3	42.4	37.1	1,209.6	606.5	50.1
Canadian trade areas	24,476.6	3,824.4	15.6	1,339.2	488.7	36.5	23,137.4	3,335.7	14.4	24,494.6	3,196.2	13.0
Pacific Canada	2,686.2	898.4	33.4	721.5	484.1	67.1	1,964.7	414.3	21.1	4,820.9	1,298.7	26.9
Great Lakes Canada	12,107.8	1,692.7	14.0	15.9	0.9	5.7	12,091.9	1,691.8	14.0	9,874.6	1,365.9	13.8
Atlantic Canada and Newfoundland	9,682.6	1,233.3	12.7	601.8	3.7	0.6	9,080.8	1,229.6	13.5	9,799.1	531.7	5.4

*Denotes less than 50,000 pounds; less than one tenth of one percent.

[1]Classification of dry cargo vessels as "liner" or "irregular or tramp" is based on characteristics of each voyage (whether the voyage is part of a scheduled vessel operation, etc.) using the classification criteria of the Maritime Administration.

Table 4.--SHIPPING WEIGHT OF UNITED STATES GENERAL IMPORTS OF MERCHANDISE ON TANKER VESSELS BY TRADE AREA AND FLAG OF VESSEL: CALENDAR YEAR 1951

Data in millions of pounds. Totals represent the sums of unrounded figures, hence may vary slightly from the sums of the rounded amounts

Trade area	Calendar year 1951			Calendar year 1950		
	Total	United States flag	Percent U. S.	Total	United States flag	Percent U. S.
Trade area grand total	100,875.2	49,775.9	49.3	100,162.7	55,015.9	54.9
Foreign trade areas except Canadian	100,844.7	49,757.6	49.3	100,130.9	54,995.5	54.9
Caribbean	79,927.2	42,582.2	53.2	80,702.9	48,428.2	60.0
East Coast South America	3.3	(*)	(*)	.....	.....	.....
West Coast South America	40.0	16.8	42.0	4.1	.....	.....
West Coast Central America and Mexico	41.8	30.7	73.4	22.8	15.6	68.4
Gulf Coast Mexico	6,897.2	3,691.7	60.5	6,011.2	3,740.1	62.2
United Kingdom and Eire	562.4	166.5	29.6	283.1	67.4	23.8
Baltic, Scandinavia, Iceland and Greenland	115.3	.....	.....	140.3	29.9	21.3
Bayonne-Hamburg Range	1,222.9	512.7	41.9	296.8	129.8	43.7
Portugal and Spanish Atlantic	2.0	.....	.....	2.9	.....	.....
Azores, Mediterranean and Black Sea	4,670.9	380.4	8.4	341.9	.....	.....
West Coast Africa	.....	.....	.....	.....	.....	.....
South and East Africa	.....	.....	.....	.....	.....	.....
Australasia	.....	.....	.....	.....	.....	.....
India, Persian Gulf and Red Sea	6,993.8	2,333.9	3.4	12,325.1	2,584.5	21.0
Straits Settlements and Netherlands East Indies	1,045.9	.....	.....	(*)	(*)	(*)
South China, Formosa and Philippines	122.0	42.7	35.0	.....	.....	.....
North China including Shanghai, and Japan	.....	.....	.....	.....	.....	.....
Canadian trade areas	30.4	18.3	60.2	31.8	20.4	64.2
Pacific Canada	2.5	0.4	16.0	8.5	8.4	98.8
Great Lakes Canada	17.9	17.9	100.0	9.8	9.8	100.0
Atlantic Canada and Newfoundland	10.0	(*)	(*)	13.5	2.3	17.0

*Denotes less than 50,000 pounds, less than one tenth of one percent.

THE WORLD TANKER FLEET

A REVIEW OF THE TANKER TONNAGE SITUATION

STATISTICS compiled by John I. Jacobs & Co., Ltd., show that the increase in the world tanker fleet of 2,000 tons d.w. and over gained momentum during the first half of 1952. Newbuildings totalled 75 of slightly over 1,320,000 tons d.w., while deductions only amounted to five vessels of about 53,500 tons d.w., consisting of three broken up and two lost. After minor adjustments, the net increase was just over 1,275,000 tons d.w., against an increase of about 1,130,000 tons d.w. in the second half of 1951, the fleet having now reached a total of 2,366 ships of 31,054,422 tons d.w.

All the main flags except the U.S. show increases, the largest being British with about 300,000 tons d.w., and Liberian with about 228,000 tons d.w. It is remarkable that the first tanker was placed under the Liberian flag only just over three years ago and that this flag now takes seventh place, with a total of more than 1,000,000 tons d.w. Compared with its total fleet, the Norwegian increase of about 140,000 tons d.w. was small, the number of new ships being fewer and again offset to some extent by sales of existing vessels. The largest increase in relation to its previous figure was Brazil, with about 65,000 tons d.w., the nucleus of a new national Brazilian fleet. The further small reduction in tankers under U.S. flag means that they now only represent about 27½ per cent of the present world total as against about 58½ per cent of the world total as at June 30, 1946. This does not mean that the tonnage operated by American interests has actually dropped to anything like this extent, so much of it now being under other flags such as Panamanian and Liberian.

At the end of last year, orders for tankers of 5,000 tons d.w. and over stood at about 590 of about 11,800,000 tons d.w., of which 75, of slightly over 1,320,000 tons d.w., have already been completed. Yet the latest total figure of new orders has now reached about 691 of over 14,300,000 tons d.w., representing about 46 per cent of the present world fleet. This means that about 175 contracts, or rather more than 3,820,000 tons d.w., have been added during the six months under review, although it is probable that many of these orders were placed earlier without being published. The flow of announcements of new orders has tended to slow down considerably during the last two months, but has by no means ceased. Most notable since June 30 is a further seven ships of 32,000 tons d.w. each for a major British oil company.

The delivery figures are most enlightening, and again rather astonishing. Estimates show that the tankers on order at June 30 are due for delivery approximately as follows:—

	No.	Tons d.w.
2nd half year, 1952	103	1,860,000
1953	215	4,390,000
1954	162	3,460,000
1955	102	2,370,000
1956	76	1,690,000
1957	31	760,000

Allowing for some degree of optimism in estimated delivery dates, also possible delays due to the widespread demands for steel, it is to be expected that actual deliveries will fall well short of these targets, especially in the second half of 1952, and in 1953 and 1954. However, it is obvious that the rate of delivery of rather more than 2,000,000 tons d.w. in each of the years 1950 and 1951 will be substantially exceeded in 1952 and entirely outstripped in 1953 and 1954. The main reason for this is that the large capacity U.S. yards are again coming into full-scale operation, after a period of virtual inactivity, building mainly vessels of 26,000/30,000 tons d.w. or even larger. Similarly, German yards are also just running into full production of tankers and completing them in very rapid time. The same applies to Japan on a somewhat smaller scale.

The bulk of the newbuilding tankers fall into three broad groups. The largest comprises vessels for U.S. oil companies and tramp owners of U.S. and various other nationalities which are likely to go under U.S. Panamanian and Liberian flags, amounting to well over 4,000,000 tons d.w. Next come ships for Norwegian tramp owners, totalling about 3,400,000 tons d.w., representing somewhat more than 75 per cent of the present Norwegian fleet. Only a little less is the total of about 3,375,000 tons d.w. for oil companies and tramp owners normally trading under the British flag, about 53 per cent of the existing British fleet. Six months ago this last group was the largest of the three. As regards distribution between oil companies and tramp owners, the balance is heavily on the side of the latter, the respective figures being about 3,840,000 tons d.w. and about 10,500,000 tons d.w. It is estimated that fully 2,700,000 tons d.w. of the new tonnage will come under Greek control, the three largest owning groups each having more than 500,000 tons d.w. on order. Taking into account the fact that such a large proportion of the U.S. and British fleets is owned by oil companies, this means that as far as tramp tonnage is concerned the Greek controlled block probably already ranks only second to the big Norwegian tramp fleet and will increasingly assume this position in the future.

Although most of the British, Swedish and Norwegian shipyards were reported some time ago to be almost fully booked up to 1957, a good many additional contracts at these yards have been announced since the beginning of the year. Doubtless some of them were placed some time ago, in other cases they are probably on berths which had been held in reserve, and in a number of instances they are conversions from dry-cargo ships previously on order. Even the seven large tankers for a British oil company at British yards announced since June 30 are still understood to be for 1955-57 delivery. Most of the German yards are booked much further ahead than those in the U.S. and Japan, which can certainly still offer some deliveries in 1954 provided owners are prepared to face very high prices and are able to pay dollars. French yards, where the cost is also heavy, have benefited from the subsidy arrangements made by their Government and have booked orders both from French and other owners until well into 1955. Government assistance also applies in Italian yards, so far building exclusively for Italian owners and only booked up to about middle-1954. Among yards new to tanker construction, at least since the war, are

WORLD TANKER FLEET OF 2,000 TONS D.W. AND OVER

Flag	Total at 30.6.52 No.	Total at 30.6.52 Tons d.w.	Per-centage	Total at 31.12.51 No.	Total at 31.12.51 Tons d.w.	Per-centage
U.S.	583	8,578,029	27.62	585	8,602,562	28.89
British	515	6,344,825	20.43	502	6,047,633	20.31
Norwegian	303	4,442,069	14.30	295	4,306,160	14.46
Panamanian	193	2,901,022	9.34	186	2,796,084	9.39
French	94	1,246,382	4.01	88	1,122,592	3.77
Italian	92	1,101,102	3.55	88	1,047,492	3.52
Liberian	48	1,014,804	3.26	37	783,146	2.63
Dutch	109	872,052	2.81	107	865,752	2.91
Swedish	53	792,121	2.55	47	672,726	2.26
Japanese	42	562,896	1.81	39	507,896	1.70
Danish	31	463,533	1.49	30	443,911	1.49
Argentine	46	447,323	1.44	44	412,423	1.39
Canadian	53	355,495	1.14	52	339,695	1.14
Honduran	12	228,910	0.74	11	220,610	0.74
Spanish	23	200,505	0.65	23	200,505	0.67
Mexican	20	189,772	0.61	20	189,772	0.64
Greek	14	167,770	0.54	13	162,033	0.54
German	15	163,548	0.53	14	153,284	0.52
Venezuelan	36	157,231	0.51	36	157,231	0.53
Brazilian	12	151,341	0.49	8	86,281	0.29
Russian	21	149,892	0.48	21	149,892	0.50
Belgian	8	100,565	0.32	8	100,565	0.34
Portuguese	9	97,865	0.32	8	81,765	0.27
Finnish	7	79,195	0.26	7	79,195	0.27
Chinese	5	61,000	0.19	5	61,000	0.20
Turkish	4	39,360	0.13	4	39,360	0.13
Uruguayan	2	33,230	0.11	2	33,230	0.11
Swiss	2	22,360	0.07	2	22,360	0.08
Yugo-Slav	2	21,710	0.07	2	21,710	0.07
Polish	2	21,329	0.07	2	21,329	0.07
Costa Rican	1	10,327	0.03	1	10,327	0.04
Pakistan	1	9,760	0.03	1	9,760	0.03
Chilean	2	9,662	0.03	2	9,662	0.03
Peruvian	2	6,500	0.02	2	6,500	0.02
Indian	1	5,380	0.02	1	5,380	0.02
Colombian	1	3,065	0.01	1	3,065	0.01
New Zealand	1	3,000	0.01	1	3,000	0.01
Siamese	1	2,000	0.01	1	2,000	0.01
	2,366	31,054,422		2,296	29,927,488	

SOURCE: John I. Jacobs & Co., report, as published in "The Shipping World" for Aug. 20, 1952

Nordseewerke, Emden, and Jos. Boel & Fils S.A., Belgium, both of which have recently booked orders for 1953-54 delivery.

The tendency towards increased size is constantly noticeable. Greek owners leading the way with the largest ships. The 50,000-tonner which has often been projected has not yet become a reality, but at least five vessels of about 45,000 tons d.w. are now on order in the U.S.A. closely followed by two of 44,000 tons in the U.K. and two of 40,000 tons in Germany, all for Greek account. Next come four 38,000-tonners in Japan for U.S. tramp owners. Newbuildings in the 24,000/33,000 tons d.w. class total about 185, including a considerable number for oil companies. Existing ships in this class already total 99. Of the remaining newbuildings, the great majority are of 16,000/20,000 tons d.w., with the emphasis on the 18,000-tonner. The following table illustrates clearly the trend in size of tankers of 5,000 tons d.w. and over:—

	Average size
Existing fleet as at 31.12.51	14,325 d.w.
Newbuildings delivered during 1st half, 1952	19,155 d.w.
Newbuildings on order as at 30.6.52	20,755 d.w.

Although port facilities in many places are being developed to accommodate the ever-increasing size, and the very large ships certainly provide the most economic transportation wherever it is practicable to use them, there may well come a time when a definite move will have to be made towards replacing the more moderate size ships which are needed for many ports and trades where limitations will still apply. Tramp owners can hardly be encouraged to build 12,000/14,000-tonners while in general such ships are only able to command the same rate as the 16,000/18,000 or even 20,000-tonner. In time charter negotiations it is often argued, for example, that a 13,500 tons d.w. ship will show a higher freight cost per ton of oil carried and that she is consequently only worth a lower rate of hire than a vessel of 16,000 or 18,000 tons d.w.

Of the 691 new tankers on order, about 275 are turbine ships and the remainder diesel. Broadly, the dividing line is still around the 18,000/19,000 tons mark, the diesel engine being most used up to this size and the turbine for larger vessels. A wide divergence of views is to be seen between Scandinavian owners on the one hand and American and Greek on the other. The former still appear reluctant to turn to the turbine even for their large ships, while the latter are now using the turbine almost exclusively for all sizes. British oil companies are also increasingly favouring the turbine for any ships of 18,000 tons or larger.

Although water speeds necessarily remain low in relation to most other forms of transportation, the tanker is by no means lagging behind in the general move towards ever-increasing speed. Many ships capable of 16/17 knots on trials are on order, and anything below about 15 knots on trials is rather the exception among recent contracts. In the case of large diesel tankers, this is leading to the development of engines of quite exceptional size and horse power.

Without attempting any forecast, we drew attention in our last review to a number of important factors. None of these have materially changed except that perhaps the prospects of termination of the war in Korea now appear less encouraging. The loss of the Abadan refinery is still causing many long hauls to supply territories in the Eastern Hemisphere with the products formerly refined at Abadan, and the increased import of crude oil into California from the Persian Gulf has also given rise to many more long hauls.

New factors in the reverse direction tending to reduce the demand for tonnage are the pipeline from Kirkuk to Banias, although not yet operating to full capacity, also strikes which have occurred in the U.S. refineries and steel industry. Another feature not so directly affecting tankers, but nevertheless disquieting, is the current depression in the dry-cargo market.

On balance, and remembering that the margin of free tonnage operating voyage by voyage has been quite small, it might have been expected that the tanker market over the summer months would at least have remained as firm as last year, but this has by no means been the case. At the moment, it seems that most major charterers are well supplied with tonnage for the next months and not particularly anxious to start negotiations for forward positions. On the other hand, owners generally maintain an optimistic outlook for the coming winter and are equally reluctant to tie up their ships unless an attractive proposition is put before them. On longer term time charter basis, the volume of business concluded recently has been much smaller, but there is no sign of rates having been influenced to any degree by the weak voyage market.

It is true that since 1950 the oil trade has proved to be capable of absorbing new tonnage at the rate of rather more than 2,000,000 tons d.w. each year, and in view of the shortage which developed at peak periods it is evident that even more could have been absorbed. This, however, can hardly be regarded as a period of entirely normal expansion since it has included both the Korean war and the initiation of a wide rearmament programme, although admittedly the latter may be expected to assume much larger proportions over the next two or three years. The inference is that unless anything unforeseen happens, the oil industry should comfortably be able to continue to take in new tonnage at a similar rate, but in fact the figures already quoted show that between now and the end of 1954 deliveries should be at a much higher rate, and in 1953 in particular will probably be nearer double.

Certain estimates of the probable increase in world oil consumption have recently been given by a representative of a leading oil company, and it has been suggested that an increase in the world tanker fleet of about 10,000,000 tons d.w. will be needed in the next 5 to 6 years. Figures concerning new building tankers, however, indicate that as much as 13,500,000 tons d.w. should be added by the end of 1956, and while this makes no allowance for scrapping the experience of the past few years leads to the conclusion that nothing even approaching this balance of 3,500,000 tons d.w. is likely to be broken up within this period. The fact that breaking up during the first half of this year only amounted to three very old vessels, of less than 25,000 tons total d.w., again suggests that this is almost a negligible factor so long as good rates are obtainable.

Appendix C

ARTICLE FROM THE SHIPPING WORLD, DATED AUGUST 20, 1952.

(See opposite ☛)

Appendix C

October 17,1952

MERCHANT FLEETS OF THE WORLD AS OF JUNE 30, 1952. (TONNAGE IN THOUSANDS)

FLAG	NO.	GROSS	DWT
Total - All Flags	13,788	80,222	112,675
United States	3,441	25,627	36,905
British Empire	3,006	18,797	24,676
Argentina	141	903	1,153
Belgium	75	428	582
Brazil	182	684	971
Burma	4	14	22
Bulgaria	4	10	19
Chile	41	161	217
China	143	415	581
Colombia	12	33	46
Costa Rica	17	88	131
Cuba	11	26	34
Czechoslovakia	1	6	11
Denmark	312	1,260	1,825
Dominican Republic	1	3	2
Ecuador	6	15	21
Egypt	20	80	88
Finland	193	527	795
France	559	3,276	4,120
Germany	319	1,002	1,615
Greece	211	1,177	1,791
Guatemala	1	3	3
Honduras	79	425	591
Hungary	2	2	3
Iceland	13	34	38
Indonesia	8	34	40
Iran	1	7	10
Ireland	12	36	54
Israeli	23	105	149
Italy	517	3,048	4,196
Japan	497	2,379	3,512
Korea	4	8	12
Liberia	99	942	1,501
Mexico	30	152	220
Netherlands	496	2,865	3,746
Nicaragua	3	5	7
Norway	961	5,533	8,437
Panama	550	3,730	5,597
Peru	22	85	113
Philippines	23	93	127
Poland	59	241	338
Portugal	93	419	548
Rumania	7	30	36
Spain	268	982	1,312
Sweden	594	2,157	3,239
Switzerland	21	96	152
Syria	1	1	2
Thailand	7	12	18
Turkey	109	387	516
Uruguay	8	48	73
U.S.S.R.	477	1,457	1,910
Venezuela	51	149	209
Yugoslavia	53	225	356

Source: U.S. Department of Commerce, October 9, 1952.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

v.

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* ON BEHALF OF THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH

SILAS B. AXTELL,
Attorney for Merchant Seamen only,
Counsel for Danish Sailors' and
Firemen's Union, New York Branch.

MYRON SCOTT,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

v.

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* ON BEHALF OF THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Danish Sailors' and Firemen's Union, New York Branch, through its counsel, Silas B. Axtell, respectfully moves this Court for leave to file a brief as *amicus curiae* on behalf of itself and on behalf of its members upon the ground that it has a primary interest to protect and represent to the Court in the contracts of employment which its members make daily in the port of New York with the operators of ships of various nations, as stated in the affidavit of Fred B. Clausen, representative of the New York Branch of the Danish Sailors' and Firemen's Union, sworn to January 16, 1953, made a part of this Motion, the peti-

tion of the various Danish sailors annexed to and made part of the affidavit of Mr. Fred B. Clausen, and his letter to the Justices of the Supreme Court of the United States, dated January 15, 1953, and for the reasons given in the brief of counsel in support of this Motion.

Respectfully submitted,

Attorney for
Danish Sailers' and Firemen's Union,
New York Branch,
156 Montague Street,
Brooklyn 2, N. Y.

of Counsel.

Affidavit of Fred Clausen.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952—No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

FRED CLAUSEN, being duly sworn, deposes and says: I am agent of the Danish Seamen's Union and of the Danish Firemen's Union with offices at New York. Our headquarters are in Copenhagen, Denmark.

I have seen the statement in the brief of the Petitioner, J. Lauritzen, from which I infer that the Danish Seamen's Unions have been consulted by the Danish Government and have acquiesced in the filing of this brief by Lauritzen.

We have had meetings and discussions on the subject in New York. There are thousands of Danish seamen, members of the Danish Seamen's Union or the Danish Firemen's Union, who sail out of New York in vessels carrying cargoes from New York to foreign ports and bringing back to New York cargoes from foreign ports. These seamen ship and reship out of New York and belong to the American zone of influence. They seldom go back to the old country. Most of them would be glad, no doubt, to become citizens of the United States if the laws of the United States were amended so that they could do so. Most

of the ships on which they work are owned by American interests and operated by shipping agents, brokers and operators from New York and other American ports. While in most instances these men do receive their compensation for personal injury under the Danish Compensation Act, yet the fact that they can go to American courts is of great importance to them for this reason, that the employers or the underwriters will quickly offer reasonable compensation in most instances and claims are amicably settled, but I feel that if the door to this opportunity to obtain justice is closed, the result will be very bad for the interests of those alien seamen who are domiciled in America, many thousands in number.

Annexed is petition signed by seamen. If the time permitted, they would all sign it.

FRED CLAUSEN.

Sworn to before me this
16th day of January, 1953.

CELIA HOLZMAN,
Notary Public,
State of New York.
Qualified Kings County.
No. 24.6951650.
Cert. filed Kings Co. Clk. & Reg.
Term expires March 31, 1954.

Petition, Annexed to Foregoing Affidavit.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952, No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

PETITION TO Fred Claussen, Agent Danish Seamen's Union and Danish Firemen's Union:

We, the undersigned seamen, have been sailing out of ports of the U. S. for years on vessels operated by owners who carry cargoes to foreign ports and bring cargoes from other places in the world to be discharged in the U.S.A.

On Danish vessels we only sign a payroll giving our rating, wages and destination.

We are no longer arrested if we quit before our contract is up. We can leave on 7 days notice. All of these advantages have come to us because of the great LaFollette Seamen's Act.

We earnestly pray that the Judges of this Court shall make no decision that will prevent our petitioning the courts of the U. S. to help us to get justice.

As you know, we have understood for many years when we sign articles in America we get American conditions, no arrest for desertion and we have the Jones Act.

Please relay this information to the Supreme Court for us if you can properly do so and help Evald Larsen to get his money.

ADDRESS
c/o Danish Seamen's Union
156 Montague Street
Brooklyn 2, N. Y.

Letter.

DANISH SAILORS AND FIREMEN'S UNION
New York Branch
156 Montague Street
Brooklyn 2, N. Y.

Fred B. Clausen — Private: ULster 8-3178
Representative — Phone: MAin 4-3910

Somandenes Forbund I Danmark
Söfyrbodernes Forbund I Danmark

Brooklyn, N. Y., Jan. 15, 1953.

To The Justices of:
The Supreme Court of The United States,
Washington, D. C.

Ref.: J. Lauritzen against Evald Larsen.

Gentlemen:

Enclosed hereby petitions (2) signed by seamen, members of our unions, which have been requested of me to forward to the Supreme Court,—which speaks for itselfs.

Being a seaman myself, who for many years sailed on ships of all nationalities, mostly foreign, I fully understand my fellowseaman and our members, in their request to me, to make sure, that their opinion and wish, that of their rights under american Laws, as granted them under the "La Follette Act" (Seamens Act) and the "Jones Act" while sailing in foreign ships to and from the United States, will be protected and all efforts made, that they may remain.

As I have enjoied the privilege of representing them here in The United States for several years, I fully understand their anxiety of being sure, that the conditions, as contained in the abovenamed Laws, will remain.

I beg of the Justices of this Court, to give this petitions carefull consideration.

Respectfully yours,

FRED. B. CLAUSEN,
Fred. B. Clausen,
Representative,
New York Branch.

Enclosed: 2 petitions.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

v.

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* ON BEHALF OF THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH

Statement

As soon as I obtained a copy of the petition and briefs of the parties to this action, I asked for leave to participate in the oral argument and to file a brief *amicus curiae* on behalf of the Friends of Andrew Furuseth Legislative Association. On learning that that could not be done, I prepared a motion so that I might not only file a brief *amicus curiae* but participate in the oral argument as well. Then the parties to the action invited me to file a brief *amicus curiae* and I withdrew the motion to participate in the oral argument.

Although I have been a member of the bar of New York State since 1910 and of this Court since I became admitted for the purpose of arguing the *Chelentis* case,* and had tried, briefed and argued many appeals in the District and Circuit Courts, involving various phases of this Act, including its constitutionality, the opening of the Appellate Courts to seamen without the prepayment of fees including, of course, foreign seamen, Mr. Furuseth and I thought it was wise to get more experienced counsel to argue the *Panama* v. *Johnson*** case, involving the constitutionality of the Jones Act, in *Dillon* v. *Strathearn.**** Wade H. Ellis, former Solicitor General of the United States, was chosen.

Had the seamen been able to have afforded the services of lawyers who were experienced, better trained and more learned, I think perhaps that long ago the uncertainty that still seems to prevail as to the intention of Congress in passing the LaFollette Seamen's Act would have been dissolved.

On page 7 of the brief of Skibsfartens Arbeidsgiverforening Mr. Hemingway says:

> "If the decision of the Court of Appeals in this case is affirmed, Norwegian seamen who sign on Norwegian ships in the United States will have access to a scheme of remedies wholly distinct from the foregoing, which still govern the rights of all other Norwegian seamen. Clearly the intention to interfere with the internal affairs of foreign nations should not be attributed to Congress without a clearer expression than found in the Jones Act."

"The foregoing" refers to his description of the rights the Norwegians enjoy to some insurance fund or compensa-

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* *Chelentis* v. *Luckenbach*, 247 U. S. 372, argued 4/18/18, decided 6/3/18.

** *Panama* v. *Johnson*, 264 U. S. 375.

*** *Dillon* v. *Strathearn*, 252 U. S. 348, 248 U. S. 182.

tion setup under the Norwegian law for the benefit of Norwegian landsmen and Norwegian seamen.

Of course, this criticism applies to the compensation scheme of the Danish Government. Mr. John Lord O'Brian, counsel for the Royal Danish Government says that that government regards the decision below as constituting the abandonment by the United States of the internationally accepted rule of comity that the law of the flag shall govern inernal affairs on board a vessel.

The seamen being poor came to the Seamen's Branch of the Legal Aid Society, 1 Broadway, in 1908, where I was a law clerk. The LaFollette Seamen's Act, first passed in 1912, was then in typewritten form, requiring corrections that even a law student could make.

The Seamen's Act as Andrew Furuseth conceived it was intended to apply to all seamen on all ships and to extend as far as Congress could make it go.

The legislative efforts of organized seamen before 1912 are briefly as follows:

June 9, 1874—Abolition of arrest and imprisonment for desertion in coast and lake trade, U. S.

Apr. 2, 1878—First effort of union organization of seamen.

Mar. 9, 1885—Sailors' Union of the Pacific organized.

June 3, 1886—First strike for higher pay.

Feb. 1, 1887—Andrew Furuseth became secretary of the Sailors' Union of the Pacific.

Mar. 6, 1894—Furuseth went to Washington to lobby for the McGuire Act, passed Dec. 13, 1898.

Dec. 21, 1898—The White Act became a law, the second Furuseth legislative victory, abolishing corporal punishment and giving right to draw half wages on American ships.

May 1, 1899—A strike and increase of membership to 3465.

Apr. 3, 1902—First formal working and wage agreement with Shipowners Association signed.

June 1, 1904—Senator Alger of Michigan introduced Bill to make it a misdemeanor to withhold a seaman's clothing.

Furuseth, born in Norway March 12, 1854, had served under the flags of ships of Norway, Great Britain, Sweden, Holland and the United States before he ran away from a brutal master in a ship at Astoria, Washington, was chased by bloodhounds, and joined with other sailors in trying to organize on Folsom Wharf in San Francisco in 1883.

He had learned about the Constitution of the United States and knew of the case of *Robertson* v. *Baldwin*.* Four union seamen had gone to jail to test the question as to whether the 13th amendment invalidated Sec. 4596 Rev. Stat. The Supreme Court seven to one, Justice Gray not sitting, Justice Harlan alone dissenting, held that the Constitution did not prevent the private owner from putting the seaman in jail if he broke his contract, stating (p. 280):

"We think the power of justices of the peace to arrest deserting seamen and deliver them on board their

* *Robertson* v. *Baldwin*, 165 U. S. 275, reached the Supreme Court and was argued Dec. 15, 1896, decided Jan. 25, 1897.

vessel is not within the definition of the 'judicial power' as defined by the Constitution and may be lawfully conferred upon state officers.''

On page 281:

''We are also of the opinion that, even if the contract of a seaman could be considered within the letter of the Thirteenth Amendment, it is not, within its spirit, a case of involuntary servitude.''

The Solicitor General of the United States appeared for the seamen in that case, as he did in all the other great cases where the seamen's interests required it.*

Having been a director of the Friends of Andrew Furuseth Legislative Association, which was created shortly after Furuseth's death,** I inquired of the Solicitor General of the United States whether he intended to file a brief *amicus curiae* in this case.***

On learning that briefs had been filed on behalf of the governments of Great Britain, Holland, Norway and Sweden to support the petition of J. Lauritzen, a Danish corporate owner, I communicated with the labor groups of all these countries to inform them of the case and inquire whether they would file briefs *amici curiae* for the seaman. The answer from Einar Johansen, Agent of

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* *Bark Endora*, 190 U. S. 169.
Dillon v. *Strathearn*, *supra*.
Sandberg v. *McDonald* (The Talus, British vessel), 248 U. S. 185.
Neilson v. *The Rhine* and
Hardy v. *Windrush*, 248 U. S. 205.
Jackson v. *Archimedes*, 275 U. S. 463.

** Jan. 24, 1938.

*** Mr. Cummings' letter, dated December 4, 1952, said that they would do it if requested to do so by the Supreme Court of the United States (See Exhibit A).

Norsk Sjomannsforbund (Norwegian Seamen's Association, New York Branch) (who is a director of the Friends of Andrew Furuseth Legislative Association) dated December 4, 1952 (see Exhibit B) was followed by one from Tom Yates, Secretary of the National Union of Seamen of the United Kingdom, both advising that their governments were dropping out of the contest. This was in reply to my statement to him of December 8, 1952.*

Only on January 14, 1953, did Mr. Clausen, Agent of The Danish Sailors' and Firemen's Union, New York Branch, learn that a brief on their behalf, similar to the brief filed by the seamen of Panamanian Seamen's Union by Mr. Jacob Rassner, attorney for petitioner, Herbert Lebovici, of counsel, had not been filed. Hence he wrote his letter, dated January 15, 1953, and signed the petition and we made the motion for leave to file a brief, dated January 16, 1953.

These alien seamen, many of whom are Scandanavian, are good seamen. The briefs submitted here *amici curiae* by Mr. Lebovici and Mr. Graham show that some vessels of Liberian flag registration are owned by corporations of Panama and other countries and that the crews consist of many nationalities. While slavery, or serfdom, on board the ship has been abolished legally, yet these alien seamen are picked up by the immigration officers if they overstay their shore leave longer than 29 days and are put into detention. Add to that hazard their inability to obtain adequate and fair compensation for injuries

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* "Mr. Tom Yates, General Secretary, National Union of Seamen, Maritime House, Old Town, Clapham, London, S. W. 4. The wholesome and salutary action by the Norwegian Seamen's Union and its government blazes the way. I enclose extra copies of this letter and I trust you will send them to the Dutch government, to confirm their position already similar to that of Norway, and a copy to the Danish government and its underwriters. The Danish seamen here, its president and its agent have decided to file a brief amicus curiae on behalf of Larsen the seaman. S. B. Axtell"

sustained in the operation of the ship, the foreign shipowner is placed in a position of advantage over the American flag shipowner. The result is that we will have to increase the subsidy to American ship owners. Except for an Act of Congress not even 50 percent of the Marshall Plan cargoes to Europe would have been carried in American bottoms.

Anticipating that the justices of this Court are willing to receive and consider a petition and brief for these Danish seamen in New York, whose government has permitted its name to be used on the petition and brief of the Petitioner herein, I respectfully submit the following:

SUMMARY OF ARGUMENT

The Jones Act was conceived and designed as a relief for all seamen on all ships sailing out of ports of the United States and the Danish seamen, as members of the Danish Sailors' and Firemen's Union, New York Branch, employed in New York and sailing out of New York, should have this relief.

In 1915 the only American seamen were those employed in the coastwise vessels of the United States; a few tankers of oil companies; some ships carrying pineapples from the Hawaiian Islands and salmon and supplies to Alaska, plus the four old 12,000 ton steamers, ST. LOUIS, ST. PAUL, PHILADELPHIA and NEW YORK, known as the American Line. The officers of those vessels had to be citizens of the United States but they were all naturalized and while they kept mailing addresses in New York, all of them lived in England. The engineroom crew were British nationals from Liverpool. Some of the deck hands were American seamen.

As to whether the *Jones Act* applies to foreign ships there is no doubt that its framers intended ~~that~~ it should. The *Chelentis* case (*supra*) was lost because of the reason-

ing of Justice McReynolds that the common law of the land or an Act of the legislature of Maryland creating a workmen's compensation act could not be extended to the maritime jurisdiction or disturb the uniformity of the maritime law.

We then sought the advice of ex-Senator George Sutherland, who had fought hard for the Seamen's Act while he was in the Senate. He took us to the office of Senator Wesley M. Jones, Chairman of the Committee on Commerce of the United States Senate. The senator gave the matter priority. Senator Jones agreed that any amendment of the Seamen's Act in the absence of a provision that it should not apply to foreign vessels would be applicable as a condition of entry to any foreign vessels which came into ports of the United States.

The word "any" had been used in Sec. 20 of the Seamen's Act in this way:

> "in any suit to recover damages"

We changed it to read:

> "any seaman who shall suffer personal injury in the course of his employment may at his election maintain an action for damages at law."

I will say now, as we all agreed then, the word "election" will give to any seaman, foreign as well as American, the right to choose compensation under the maritime law as it is understood and enforced in America or to take what he is offered under the law of the ship's flag.

As stated, in argument in two previous cases, *McAllister** and Hust**, this particular phraseology about the election to sue, in the Jones Act, was suggested by the fact

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* *McAllister* v. *Cosmopolitan Shipping Co.*, 337 U. S. 783, 1949 A. M. C. 1031.

** *Hust* v. *Moore McCormack*, 328 U. S. 707, 1946 A. M. C. 727.

that the Circuit Court of Appeals in the Third Circuit was then considering the question of whether a right to a jury trial had really been saved to seamen by the amendment to the Judicial Act which created the jurisdiction in admiralty. See *Berg* v. *Philadelphia & Reading R. R.*†

It was not the intention of the framers of the Jones Act to disrupt the commerce of the world or to mandate the courts, by requiring all foreign owners to pay their seamen damages in accordance with the maritime law of the United States. The seamen and their lawyers knew about the decisions of the Supreme Court in *The Osceola**, *Harden* v. *Gorden*** and *Reed* v. *Canfield****, in the 1820's. It had been the policy of our courts to take jurisdiction of worthy cases of seamen in spite of the comity rule.

Within the next fifty years the cargo carrying vessel owners of the world stilled the protests and saved the expense of litigation by a series of commercial treaties. When the Seamen's Act was drafted it directed the President to abrogate all those treaties and let them be rewritten in such a way as would permit these seamen to have access to our courts as they always had****

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† *Berg* v. *Philadelphia & Reading*, 274 Fed. 534.

* *The Osceola*, 189 U. S. 158.

** *Harden* v. *Gorden* (1823), Fed. Cases 6047, page 485, 2 Mason 541.

*** *Reed* v. *Canfield*, 20 Fed. Cases, page 426, Case #11, 641.

**** *Gambera* v. *Bergoty*, 132 F. (2d) 414, 1943 A. M. C. 45 (2 Cir. 1942), cert. den. 319 U. S. 742, 63 S. Ct. 1030, 87 L. Ed. 1699.

Gerradin v. *United Fruit Co.*, 51 Fed. (2d) 417, writ den. by this Court, 287 U. S. 642.

Kyriakos v. *Goulandris*, 151 F. (2d) 132, 1945 A. M. C. 439, no writ applied for.

Taylor v. *Atlantic Maritime*, 179 Fed. (2d) 597, writ cert. to this Court denied, 341 U. S. 915.

Larsen v. *Lauritzen*, 196 Fed. (2d) 220, writ cert. granted.

In the *Gambera* case although the libellant was not a citizen and was technically an alien ~~enemy~~, jurisdiction was sustained and this statement by the Court was made (at p. 46):

> "The Jones Act was the culmination of a series of efforts, largely those of the Seamen's Union, to secure some adequate relief for American seamen injured in their employment. It is extremely unlikely that Congress should have meant to exclude aliens who, in every sense that mattered, were members of that class merely because they had not been naturalized."

The argument of the lawyers for the owners of the *Strathearn* (supra) was that the contract between the British ship-owner and the seamen was valid when it was made in England and that the contract would have to be respected, that we were taking property without due process of law. The Court held that by entering the jurisdiction of the United States, the shipowner had waived his constitutional right. All this Court did was to uphold the doctrine that had been so forcefully stated in the *Schooner Exchange** where Justice Marshall said:

> "The jurisdiction of a nation within its own territory is necessarily exclusive and absolute."

In the case of *Carroll* v. *Waterman SS Agency*,** Judge Clancy, (affirmed by C. C. A.), awarded $10,000.00 damages to an alien seaman who signed articles in Belfast, Ireland, in 1943, for serious injuries caused by the negligence of a coservant. This Italian ship had been seized at Hoboken, N. J.—1941 by the United States Government but was under charter of the Waterman Steamship Company to operate the ship under the flag of Panama for the deliber-

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* *Schooner Exchange*, 7 Cranch 116 (p. 136).

** *Carroll* v. *Waterman*, 1942 A. M. C. 1380, 1943 A. M. C. 339.

ate purpose of carrying cargo to the war zone, which it couldn't legally do under the neutrality law if the vessel were under the flag of the United States.

The same judge in the case of *Koziol* v. *S. S. Fylgia and Stockholms Rederi A. B. Svea* (not yet reported),** in November, 1952, dismissed a libel as well as a common law action on the authority of the decision of Judge I. R. Kaufman, Southern District of New York, in *Catherall* v. *Cunard.****

Koziol, a dispossessed citizen of Poland, having served in the underground and escaped the communists in 1946, was homeless, and had been shipping out of this pool of alien seamen from New York ever since. Due to a visit ashore in Buenos Aires, under the seven-day notice of intention to leave, which is common in all these Scandinavian vessels, he signed on the Swedish ship Fylgia to come back to New York, intending to pay off in New York again and reship. On his way he fell down some slippery stairs and he now suffers from partial paralysis of his left arm and left leg. Will he be able to make a reasonable settlement? Before the man sought legal advice, he tried to settle his claim with the owner's agent and the Swedish consul, with no success. After the complaint and libel were dismissed in November, on advice of counsel, he returned to the agent and the insurance adjuster and again was told that nothing could be done for him. Is this Polish alien to go to Stockholm?

Zygmunt K. Zawistowski, a dispossessed Polish gentleman who fought against the Germans in the last war and escaped the communists, who can not return to his native land, but fortunately has legal entry here as a dispossessed

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** *Koziol* v. *s/s Fylgia and Stockholms Rederi A. B. Svea*, not yet reported.

*** *Catherall* v. *Cunard*, 1952 A. M. C. 135, 101 Fed. Supp. 230.

person, in November 1952, jumped to the rescue of a co-servant on a Honduras ship, the Telde, under time charter of the United Fruit Company but owned by an independent Honduras corporation. In doing so he sustained injuries to his spine which will disable him for life. Since the facts in the case are such that a jury could award him damages, he has a case which the owners at the present time will consider settling. But supposing the Larsen case is upset, how is this man, who is barely able to live as it is, to go to Honduras? What court of the United States can enforce the terms of a compensation act of Honduras, if we find that they have one? He has a wife and children whom he has supported up to now. Who is to provide for their care? The public? While the owners profit from the carriage of cargoes of bananas from Honduras to New York which are sold to our taxpayers?

Judge Hand, speaking for the Circuit Court, in affirming *Gambera* v. *Bergoty* (*supra*), said that the Court considered that the decision in *Hogan* v. *Hamburg American Line** and in *Seirstadt* v. *Anderson*** had been overruled by the decision of the Supreme Court in the *Jarka* case.***

Another argument I would like to answer that I have seen in these briefs is about the jurisdictional clause at the end of the Jones Act, which reads:

> "Jurisdiction in such actions shall be under the Court in which defendant employer resides or in which his principal office is located."

This provision was added to the Act after it left the office of Senator Jones. It got attached in the conference between a House committee and a Senate committee.

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* *Hogan* v. *Hamburg American Line*, 295 U. S. 729.

** *Anderson* v. *Seirstadt*, 1926 A. M. C. 564, 726, 1928 A. M. C. 1241, 27 Fed 2d 982.

*** *Uravic* v. *Jarka*, 282 U. S. 234.

The Emergency Fleet Corporation in a suit under the Jones Act compelled the plaintiff to sue in Washington on the ground that their office and principal place of business was there. As a result of the jury verdict they afterwards decided it was just as cheap to appear in New York.*

Since amendment of the Judiciary Act our Federal courts held he can get jurisdiction of a foreign shipowner by serving the Master of his vessel—*Neset*,** or by serving his cargo agent, *Szabo*.***

A very important decision by Judge Learned Hand made from the bench (1924) on a motion to dismiss, in the Southern District when he was a District Judge, was made in the case of *Stewart* v. *Pacific Navigation Co.* **** This was the case of a British subject who was hurt on a British ship while she was coming through the Panama Canal. The case was settled after the judge's denial of motion to dismiss and no appeal was taken. It was reported as a case in admiralty. Years afterwards the error was corrected. (I called this to the attention of Judge Hand at the time I argued the *Taylor* v. *Atlantic Maritime* case (*supra*).) The shipowner's counsel argued that the Jones Act was not intended to apply to a British ship because of the language of the jurisdictional clause, much as counsel for Petitioner here does, and Learned Hand disposed of the argument in the following language:

> "The general bestowal of jurisdiction, is to be found in the right sentence, the long one; it lays down what the right shall be and against whom it shall exist. As I have already said, this language is general; there

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* *O'Shea* v. *U. S. S. B. E. F. C.*, 1925 A. M. C. 959, Fed. Supp. 123.

** *Neset*, 92 F. Sup. 78, 1950 A. M. C. 1832.

*** *Szabo*, 95 F. Supp. 519, 1951 A. M. C. 481.

**** *Stewart* v. *Pacific Navigation*, 1924 A. M. C. 1272. A motion was made which resulted in the error being corrected, 1950 A. M. C. 147.

is no indication of any purpose to limit it to U. S. corporations, and it would be highly unreasonable to impute any such purpose to Congress, for the result would be not only to deprive American seamen of the protection which the Act was meant to give them when serving on foreign ships, but to give advantage to such ships as against American ships. We all know that the purpose of Congress is directly the opposite. That being very clear the main purpose of the Act, how am I to interpret the last sentence, which confers jurisdiction? It seems to me that this would be very easy in the case of a foreign corporation. The phrase 'in which its principal office is located' clearly means in which the principal office of the foreign steamship company is located within the United States."

One reason Judge Hand was so certain in 1924 that the Jones Act was intended to apply to foreign vessels was that he remembered my argument and his decisions in the *Wabasha* (*Low Ling Sing*)* and the *Mattes*** cases. The Standard Oil Company of New Jersey had a subsidiary known as the Standard Transportation Company. The Wabasha was built in Germany and operated under the British flag. They hired a crew of seamen in New York at about $80.00 a month and the captain fired them all in Algiers and hired a new crowd for the run to Shanghai. At Shanghai he hired a Chinese crew at $7.00 a month. When the Chinese crew came in to New York they demanded half wages under R. S. 4596. Their case was tried by Judge Learned Hand at the same time as the case of the seamen who had been fired in Algiers. He awarded $12,000 damages to the men illegally discharged at Algiers and also gave judgment for wages to the Chinese who were allowed 90 days for reshipping.

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* *Low Ling Sing* v. *Standard Transp. Co. The Wabasha*, 274 Fed. 1017.

** *Mattes* v. *Standard Transp. Co.*, 274 Fed. 1019.

An intimation of the ruling that eventually came down in the *Taylor* v. *Atlantic Maritime* case (*supra*) was found in the dissent of Judge Learned Hand in *Kyriakos* (*supra*), where he said:

> "Further, unless we are to override the *Paula** liability in these circumstances will hereafter depend upon whether the foreign seaman signs on in a United States port or abroad."

When he wrote the decision in the *Taylor case* (*supra*), Judge Hand did not refer to his decision in *Stewart* v. *Pacific Navigation* (*supra*). He did remember, however, his statement in the *Kyriakos* case (*supra*) that a foreign seaman signed on in America with the implied condition that he would have the advantage of the maritime law of the United States. In the *Taylor* case he said:

> "We have denied recovery to an alien who was injured on the high seas and who signed articles in a foreign port (O'Neil)** although he had resided in this country for twenty years and had applied for naturalization and this we held in spite of the fact that for the purposes of the Jones Act such a continued residence puts a seaman in the same position as an American citizen. (*Gambera* v. *Bergoty* (*supra*)). Hence if the libellant, a non-resident alien, had not signed the articles in Norfolk, he could not have invoked the Act; and if he was entitled to recover at all, it must have been by virtue of that fact."

There has, of course, been some discussion about what law applies. Whether it is the law of the land where the vessel was lying, in this case Cuba; or the Danish land law,

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* *The Paula* (EDNY 1937), 17 F. Supp. 555, 1937 A. M. C. 63, affirmed (C. C. A. 2d 1937) 91 F. 2d, 1001, 1937 A. M. C. 988, cert. den. (sub. nom. *Peters* v. *Lauritzen*), 302 U. S. 750.

** *O'Neil* v. *Cunard*, 1947 A. M. C. 505, 160 Fed. (2d) 446.

a compensation act like the Maryland Statute in *Southern Pacific* v. *Jensen* (*supra*), or the maritime law.

We rely upon the uniform rule that the maritime law controls, as stated by Chief Justice Hughes in the *Imbrovek* case (*supra*) at page 59; quoting from *The Philadelphia*:*

> "* * * the court said: 'The jurisdiction of courts, of admiralty, in matters of contract, depends upon the nature and character of the contract; but in torts, it depends entirely on locality'."

He then quotes from Justice Story's decision in *The Plymouth***, at page 35:

> "The jurisdiction of the admiralty over maritime torts does not depend upon the wrong having been committed on board the vessel, but upon its having *been committed* on the *high seas* or other navigable waters. A trespass on board of a vessel, or by the vessel itself, above tide-water, when that was the limit of jurisdiction, was not of admiralty cognizance. The reason was, that it was not committed within the locality that gave the jurisdiction. The *vessel itself was unimportant.* * * * The jurisdiction of this admiralty does not depend upon the fact that the injury was inflicted by the vessel, but upon the locality—the high seas, or navigable waters where it occurred. Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance." * * * (Italic ours.)

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* *The Philadelphia*, 23 How. 209.

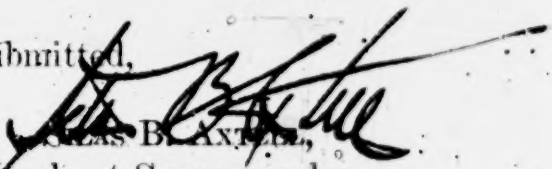
** *The Plymouth*, 3 Wall. 20.

*** See *Manro* v. *Almeida*, 10 Wheat. 473; *The Lexington*, 6 How. 344, 394; *The Commerce*, 1 Black, 574, 579; *The Rock Island Bridge*, 6 Wall. 213, 215; *The Belfast*, 7 Wall. 624, 637; *Ex Parte Easton*, 95 U. S. 68, 72; *Leathers* v. *Blessing*, 105 U. S. 626, 630; *Panama Railroad* v. *Napier Shipping Co.*, 166 U. S. 280, 285; *The Blackheath*, 195 U. S. 361, 365, 367; *Cleveland Terminal & Valley R. R. Co.* v. *Cleveland Steamship Co.*, 208 U. S. 316, 319.

While a liberal application of the maritime law to this case would permit seamen on foreign vessels to elect to sue under the maritime law here regardless of where they signed, we think that an affirmance of the decree of the case at bar by the Circuit Court in the Second Circuit is enough.

In Conclusion, we submit that what the Petitioner requires and should have is a definite and certain affirmance of the decision of the Court of Appeals of the Second Circuit. The members of the Danish Sailors' and Firemen's Union, New York Branch, have an important and substantial interest requiring such affirmance. The Jones Act was conceived, drafted and amended to benefit all seamen, American and foreign alike.

Respectfully submitted,



Attorney for Merchant Seamen only,
Counsel for Danish Sailors' and
Firemen's Union, New York Branch.

Myron Scott,
Of Counsel.

Exhibit A.

COPY

OFFICE OF THE SOLICITOR GENERAL
Washington, D. C.

December 4, 1952

Silas Blake Axtell, Esq.,
15 Moore Street
New York 4, New York

Re: Lauritzen v. Larsen, U. S. Supreme Court,
October Term, 1952. No. 226

Dear Mr. Axtell:

Your letter of November 25, 1952, requests this Office to participate in the above case, apparently by way of a brief *amicus curiae* in support of the respondent.

We had previously been asked by counsel for the petitioner to file a brief in support of his position, and had declined to do so. We have concluded, as we told petitioner's counsel, that no interest of the United States calls upon this Department to support the position of either of the parties, or to present a brief to the Supreme Court, unless, of course, the Court itself invites the filing of a brief *amicus curiae*.

Sincerely yours,

Signed WALTER J. CUMMINGS, JR.
Solicitor General

Exhibit B.

NORSK SJOMANNSFORBUND

NORWEGIAN SEAMEN'S ASSOCIATION
New York Branch

156 Montague Street
Brooklyn 2, New York, U. S. A.

Tel. Main 4-3910

Telegram-Addresse
Norforbund, New York

Brooklyn 2, N. Y. 4. December 1952

EJ/anr

Mr. Silas Blake Axtell
15 Moore Street
New York 4, N. Y.

Dear Mr. Axtell:

I have received your hand-written note that the Dutch Government has quit the Larsen case and why not call of the Norwegian.—

I refer to previous correspondence about this case, and can inform you that the Norwegian Government upon recommendation from the Norwegian Seamen's Union, has decided not to file any brief.

Very truly yours,

NORWEGIAN SEAMEN'S ASSOCIATION
E. Johansen
EINAR JOHANSEN.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

STATEMENT OF JACOB RASSNER, ATTORNEY FOR THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH, ANSWERING OBJECTION OF THE PETITIONER, J. LAURITZEN, TO PLAINTIFF-RESPONDENT'S PETITION TO FILE A BRIEF AS *AMICUS CURIAE* ON BEHALF OF THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH

JACOB RASSNER,
Counsel for
Danish Sailors' and Firemen's Union,
New York Branch.

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Exhibit B. Letter of Norwegian Seamen's Association on page 25 of the motion for leave to file a brief *amicus curiae* by Messrs. Axtell and Scott.

Exhibit C. Letter of Mr. Jacob Rassner as counsel for the Danish Sailors' and Firemen's Union to Messrs. Haight, Deming, Gardner, Poor and Havens 8

Exhibit D. List of alien seamen similarly placed to Larsen who are employed on foreign flag vessels engaged in carrying cargoes to and from American ports, who are unable to drive to Panama, Copenhagen, Oslo, London or Amsterdam, or Monrovia, Liberia, to have their cases heard in a court of admiralty 9

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STATEMENT OF JACOB RASSNER, ATTORNEY FOR THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH, ANSWERING OBJECTION OF THE PETITIONER, J. LAURITZEN, TO PLAINTIFF-RESPONDENT'S PETITION TO FILE A BRIEF AS *AMICUS CURIAE* ON BEHALF OF THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH*

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

I am a member of the bar of the State of New York and of the bar of this Court. I have been general counsel for the Danish Sailors' and Firemen's Union, New York

* List of Petitioning Seamen, Addenda Exhibit E.

Branch, for approximately five years, during which time I have handled claims for wages, maintenance and cure and personal injuries for members of said union, some of which cases are still pending in Court, many of which have been settled amicably with agents of owners of underwriters.

When the case of *Taylor* v. *Atlantic Maritime** was decided in the United States Court of Appeals and application for writ of certiorari was made by the Atlantic Maritime Company to this Court, I filed a brief *amicus curiae* on behalf of the said union (Oct. Term, 1950, No. 607) opposing the granting of said writ.

Mr. Fred B. Clausen, Agent in charge of said Branch of the Danish Sailors' and Firemen's Union, New York Branch, had authority from the officers of the Danish Sailors' Union at Copenhagen and from the Danish Firemen's Union at Copenhagen to engage counsel and file brief *amicus curiae* against the petitioning employer, Atlantic Maritime Company.

I have been associated with Silas B. Axtell in several cases and have been aware for many years of the fact that he was counsel to Andrew Furuseth, President of the International Seamen's Union of America, from about 1910 until the death of Mr. Furuseth in 1938.

I first learned of the pendency of the petition for writ of certiorari in the above matter by telephone conversation with Mr. Axtell. I ascertained that the Danish Sailors' and Firemen's Union, New York Branch, its agent and members here were desirous of participating in this case by filing a brief *amicus curiae* or doing whatever should be done in the interest of their members about two or three weeks before the case was argued on January 6. I cooperated with Mr. Herbert Lebovici, counsel for the

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* *Taylor* v. *Atlantic Maritime*, 179 Fed. (2d) 597, writ cert. den. 341 U. S. 915.

Panama Seamen's Union and through Mr. Axtell learned of the plan of Mr. Harry Graham to file brief on behalf of certain seamen.

Through Mr. George Halpern, associate counsel with Mr. Richard M. Cantor, I learned that Mr. Cantor and Mr. James M. Estabrook had entered into a stipulation that they would not consent to briefs being filed *amicus curiae* in this case.

As is indicated in the statement of Mr. James M. Estabrook, dated 29th of January 1953, in his objection to the filing of brief *amicus curiae* by the Danish Sailors' and Firemen's Union, New York Branch, an arrangement seems to have been made by the officers of the head of the Danish Sailors' Union and the Danish Firemen's Union at Copenhagen, which is inconsistent with the letter of authorization which had been issued to Mr. Clausen at the time the petition for brief *amicus curiae* was made in the *Taylor* v. *Atlantic Maritime* case, Spring of 1951 (*supra*).

Annexed hereto is a letter* which I wrote to Mr. James M. Estabrook, counsel for the petitioner, J. Lauritzen. It is unusual that counsel for the petitioner, representing employer and underwriter, should be the first to apprise the authorized agent of both unions at the New York Branch that he should not file a petition for leave to file a brief *amicus curiae* on behalf of the New York Branch and the seamen members of it.

I make this statement of fact that the petition and brief filed in the name of Silas B. Axtell, as counsel for the Danish Sailors' and Firemen's Union, Myron Scott of Counsel, was prepared, printed, served and filed under my instruction.

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* Exhibit C. (Exhibits A and B are attached to Mr. Axtell's brief.)

I state also that petitions have been signed by a large number of Danish and other seamen employed on Danish and other foreign ships which are engaged in carrying more than half the foreign trade of the United States, a great deal of which is loaded or discharged in New York.

In addition to what has been said by Mr. Axtell and Mr. Scott I would direct this Court's attention to the fact that Mr. George Sutherland, then ex-Senator from Utah (later a member of this Court), briefed and argued the case of *Dillon* v. *Strathearn** in December, 1918.

Later the same jurist was a member of this Court when the constitutionality of the Jones Act itself was established by the decision of this Court in *Panama* v. *Johnson.*** Of course Mr. Justice Sutherland, having helped draft the Jones Act and having argued the constitutionality of the Seamen's Act itself, in the *Strathearn* case, (*supra*), did not sit as a member of the Court when the *Panama* v. *Johnson* case (*supra*), was argued and decided. In fact the case was argued by Mr. Wade Ellis, former Solicitor General of the United States, his former partner.

Reference to page 45 of *Merchant Seamen's Law* (Axtell, Darwin Press, 1945) indicates that Mr. Sutherland was legal adviser to the Union, to Mr. Axtell, its counsel, and to Senator Wesley M. Jones, chairman of the Committee on Commerce of the United States Senate, who was not a lawyer, in drafting and securing the passage of the Jones Act, amendment to Section 20, which had been found ineffective by this Court in the *Chelentis* v. *Luckenbach**** case.

"In this view the statute leaves the injured seaman free under the general law—Sec. 24 (par. 3) and 236

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* *Dillon* v. *Strathearn*, 252 U. S. 348.

** *Panama* v. *Johnson*, 264 U. S. 375.

*** *Chelentis* v. *Luckenbach, S. S. Co.*, 247 U. S. 372.

(par. 3) of the Judicial Code—to assert his right of action under the new rules on the admiralty side of the court. On that side the issues will be tried by the court, but if he sues on the common-law side there will be a right of trial by jury. So construed, the statute does not encroach on the admiralty jurisdiction intended by the Constitution, but permits that jurisdiction to be invoked and exercised as it has been from the beginning. . . . The statute extends territorially as far as Congress can make it go, and there is nothing in it to cause its operation to be otherwise than uniform."

Bare reference has been made by Mr. Axtell to the legislative accomplishments of the Sailors' Union. A completely disinterested description of the LaFollette Seamen's Act as it seemed to an Englishman in 1926 appears at pages 77-87 in *A Symposium on Andrew Furuseth* (Axtell, Darwin Press) quoting from a report of Charles R. Clee, formerly superintendent, Merchant Marine, Great Britain, *Desertion and Freedom of Seamen*, reprinted from International Labor Review, Vol. XIII, No. 5-6, May-June, 1926.

There are certain excerpts from Sailors' Union of the Pacific in a book now out of print, pages 94-144* the reading of which would convince any person who might be in doubt that the framers of the Seamen's Act intended it to apply to foreign ships, and as was argued by Mr. Sutherland and stated by the Court in its decision in *Panama* v. *Johnson* (*supra*).

On page 14 of Mr. Axtell's brief he describes the manner in which the phraseology of the Jones Act was designed to make it applicable to foreign ships. On pages 31-32 of *Merchant Seamen's Law* published 1945 is a de-

* By Dr. Paul S. Taylor, published 1923, Dutton & Co., out of print, reprinted in Symposium on Andrew Furuseth, pp. 92-144.

scription of how the amendment to permit seamen to carry cases to the appellate courts without prepayment of fees and costs was accomplished by Mr. Furuseth and Senator Jones:

> "Mr. Furuseth was fortunate enough to enlist the sympathy of Senator Wesley Jones of Washington who later sponsored the Jones Act and this amendment was attached as a rider to the Civil Sundries Appropriation Act of that year, so that it was on the President's desk for signature before the ink on the signature of the Chief Justice of the Supreme Court had fairly dried."

The purposes of the Friends of Andrew Furuseth Legislative Association, formed March 12, 1939, a little over a year after his death, are stated in the Constitution as:

> "To maintain the ideals and legislative policies of Andrew Furuseth for seamen to the end that operating costs of foreign vessels may approximate that of American vessels."

Mr. Einar Johansen, agent of the Norwegian Seamen's Union in New York, referred to in the petition and brief *amicus curiae*, filed by Mr. Axtell and Mr. Scott for the Danish Sailors' and Firemen's Union, New York Branch, is a director of that Friends of Furuseth Association.

Mr. Axtell has spent all his life since 1908 to date in this work.

I think I might quote from his address to The International Bar Association at London, July 1950: "Communism has not found root in our institutions or in our transport industries. Access to justice a fair and speedy trial largely due to the wide administration of justice has formed a 'cordon sanitaire' about the Western Hemisphere."

In conclusion, of course, nobody can dispute that foreign vessels that enter harbors of the United States are subject to conditions imposed by local law, and, secondly, nobody can suggest that we could possibly enforce in our courts a maritime law of limitation such as a compensation act of a foreign country, to the disadvantage of American shipowners.

There appears to be no doubt that the Jones Act was intended to apply to foreign vessels and that the courts have repeatedly so held. Foreign seamen have been shipping under that condition for many years. If any legislation is to be sought, it would be, of course, in the nature of a treaty that might take from Danish seamen the right they now enjoy and give to Danish shipowners a lower insurance rate.

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* On page 17 of the motion for leave to file a brief *amicus curiae* by the Danish Sailors' and Firemen's Union, New York Branch, by Messrs. Axtell and Scott, reference is made to the case of a dispossessed Polish seaman (potential public charge), Sigmunt K. Zowistowsky. Word has just been received from the Consul of Honduras that the limit of liability for any injury under the Honduras law is $5,000. This man is suffering from a broken spine and is permanently disabled. The owner and employer is a Honduras corporation which charters its vessels to the United Fruit Company. Articles were signed in U. S. A. *Gerradin*, 51 F. (2) 417, 287 U. S. 642.

Respectfully submitted,

JACOB RASSNER,
Counsel for
Danish Sailors' and Firemen's Union,
New York Branch.

Exhibit C.

February 2, 1953

Haight, Deming, Gardner, Poor & Havens, Esqs.
80 Broad Street
New York, New York

Attention: James Estabrook, Esq.

Dear Sir:

I have been retained by Mr. Fred B. Clausen of 156 Montague Street, Brooklyn, New York, to investigate the circumstances under which the contents of a certain letter dated January 27, 1953, address to him by Richard Jensen and Th. Laursen came to your knowledge.

Mr. Clausen feels that the publication of said letter by having the same printed as an appendix in a matter pending before the United States Supreme Court constitutes an invasion of his personal rights.

Before taking any further steps in this matter, I would appreciate having your version.

Very truly yours,

JACOB RASSNER

JR:DF
CC to:

David P. H. Watson, Esq.
Haight, Deming, Gardner, Poor & Havens, Esqs.
80 Broad Street
New York, New York

Mr. Fred B. Clausen
156 Montague Street
Brooklyn, New York

Exhibit D.

Address

C/o Scandinavian Seamen's Union, 156 Montague St., Brooklyn 2, N. Y.

Rasmus K. Jensen, A.B.
Ole Larsen, A.B.
Jorge Clausen, A.B.
Magnusen, Steward
A. Petersen, A.B.
Erling Anderson, A.B.
Paul Paulsen, Oiler
Kenneth Wahl
Ahrel V. Jensen, A.B.
Ake Ryden, A.B.
Nielsen, A.B.
Leif Nielsen, O.S.
Ole Olsen, O.S.
Kjell Kossiua, A.B.
Bruno B., A.B.
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496-30243 Comac Frederick Oiler Fireman
578-34040 Harterman deslas Oiler Portuguse
C280559 Al Godfrey Seaman British
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Exhibit D.

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Tialner Nidsin	"
Gono Hannin	"
Ualder Larsen	"
M. Forgenjm A.B.	"
Egan Lasner A.B.	"
Hil Nulain O.S.	"
Flemming Langger A.B.	"
Tnorvald Yenniw	"
Adoel Hansen A.B.	"
Mogens Trediskler	"
Kennelh Wahl	"
Anie Aedernin A.B.	"
Borge Prip A.B.	"
Y. Adrian	"
B. J. Blemkeassein A.B.	"
E. Andersin	"
K. Boleeir	"
Indreus S. Larsen O.S.	"
Ole V. Larsin	"
K. Larsin	"
Folmer Jackosin Oiler	"
Koll Anderson	"
U. Flansen A.B.	"
A. U. Pedenni A.B.	"
B. Hansin A.B.	"
L. Nannann A.B.	"
C. Arose A.B.	"
B. Nelsen A.B.	"
K. Klansin A.B.	"

Exhibit D.

G. Lu Bisz Aerhok Oiler 25 South St.
H. Kindosk " 6 Water St.
T. Sehnedosk " 25 South St.
Trank Jrban Kross " 25 South St.
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Leo Josep A.B. "
Olaf Demsin Carpenter "
A. Jensen Oiler "
Flemming Fanger O.S. "
Egan Petesnin A.B. "
K. Bdhin A.B. "
Alide H. O. Talke A.B. "
K. Jalloes A.B. "
G. Dllevanger A.B. "
Martin Kunnel A.B. "
Kenneth C. King M.M. " Pass. P. No. 2620
Losi Bagenets Chief Mate "
Nicholas A. Bevallo Oiler "
Joe Antoin Sancfy Wiper "
San Woller A.B. "
Antorn Dr Rise Oiler "
Louis Lragal Oiler "
Joagnir Da Centa A.B. 109152 Pass. Port
Toognin M. da Silva A.B.
Ruaoef Caeda Engineer Z231959 "
Anau Ruhman Fireman "
Robert Kilgour Jr. Eng. Z62180 "
Louinal Arany Bahrla Z198404 "

Exhibit D.

Fronasa Wimeg Fireman
Uoldemar Pons Fireman
Emol Paenns Eng
Robert Smith A.B.
Volen Christiansen A.B.
Zongin Nielsen A.B. British
Egan Ezni Peterson A.B.
Fleming Fangger O.S.
Bent Tho Karnson A.B.
P. J. Blankenruie A.B.
Krestean E. Nnudsen A.B.
S. Bhin A.B.
M. Jorgensen A.B. Danish
Andreas S. Larsen Oiler Danish
Axel V. Qinsen A.B.
Magens Jensen A.B.
Leif Neilsen O.S.
Livl Opsihl F.W.T.
Arne Pedersen O.S.
Borge Prip O.S. Danish
E. J. Fpsam A.B.
Hans-H. Nielsen Bosn. Swedish
Gunnar P. Ano Swedish
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Exhibit D.

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